THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

Grace G. Knie, Circuit Court Judge

Case No. 2016-CP-42-0727

William A Morgan — Respondent,

v.

Sterling Estates Homeowner's Association, Inc. and Paul Thomas Garner — Defendants.

Of whom

Paul Thomas Garner — is — Appellant.

RECORD ON APPEAL

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FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2016CP4200727

William A Morgan
PLAINTIFF(S)

Sterling Estates Homeowners Association Inc et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☑ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

☐ **ACTION DISMISSED** (CHECK REASON): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ **ACTION STRICKEN** (CHECK REASON): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

☐ **STAYED DUE TO BANKRUPTCY**

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (CHECK APPLICABLE BOX): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

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

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☑ Statement of Judgment by the Court:

CASE SETTLED

ORDER INFORMATION

This order ☑ ends ☐ does not end the case.

☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 10/02/2018 .

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

Spartanburg Common Pleas

Case Caption: William A Morgan VS Sterling Estates Homeowners Association Inc , defendant, et al

Case Number: 2016CP4200727

Type: Order/Electronic Form 4

It is so Ordered.

s/ R. Keith Kelly - 2165

STATE OF SOUTH CAROLINA COUNTY SPARTANBURG	)	IN THE COURT OF COMMON PLEAS SEVENTH JUDICIAL CIRCUIT
William A. Morgan, Plaintiff, v. Sterling Estates Homeowner's Association, Inc., and Paul Thomas Garner, Defendant/s.	)	CIVIL ACTION NO.: 2016-CP-42-00727 Order Regarding Motion to Enforce Settlement

Hearing Date:	August 16th, 2019, at 9:30 a.m.
Hearing Judge:	Grace Gilchrist Knie
Counsel for Plaintiff:	Jason Michael Imhoff
Counsel for Defendant/s:	J. Alex Timmons & Damon C. Wlodarczyk
Court Reporter:	Michael R. Watts

This matter was before the Court on Friday, August 16th, 2019, at 9:30 a.m., in Spartanburg County, SC, the Seventh Judicial Circuit upon Plaintiff's Motion to Enforce Settlement. Attorney Jason Michael Imhoff of The Ward Law Firm, P.A. was present representing the interests of Plaintiff. Attorney J. Alex Timmons of Willson Jones Carter & Baxley, P.A. was present representing the interests of Defendant, Paul Thomas Garner. Attorney Damon C. Wlodarczyk was present and representing the interests of Defendant, Sterling Estates Homeowner's Association, Inc. Michael R. Watts was the Court Reporter.

PROCEDURAL BACKGROUND:

This action was commenced by the filing of a Summons and Complaint dated February 17th, 2016, for the causes of action of negligence, negligence per se, nuisance, and trespass. Defendant Sterling Estates Homeowner's Association, Inc. filed an Answer on March 21st, 2016,

and Defendant Paul Thomas Garner filed an Answer on May 6th, 2016. A Scheduling Order was then ordered by Judge Derham Cole on January 24th, 2017, which required discovery to be concluded by May 30th, 2017, mediation to be held on June 15th, 2017, and trial to occur on or after June 26th, 2017. On June 21st, 2017, Attorney Damon C. Wlodarczyk sent a letter to The Honorable J. Derham Cole and filed a Motion for Continuance indicating that the parties had not yet completed depositions due to attorney conflicts. The letter and motion stated both parties would be prepared for trial by December 4th, 2017. Judge Cole granted the continuance on June 22nd, 2017, allowing the trial to be set not before December 4th, 2017. On September 1st, 2017, Defendant Sterling Estates Homeowner's Association filed a Motion for Summary Judgment. Plaintiff then filed a Motion for Summary Judgment against Defendant Sterling Estates Homeowner's Association on September 22nd, 2017. The Court, Judge Cole denied the Defendant's Motion for Summary Judgment in an Order filed with the Court November 28th, 2017.

The case was then set for the January 16th, 2018, trial docket. On January 9th, 2018, the parties filed a Joint Motion to Continue the case. On January 11th, 2018, The Honorable R. Keith Kelly ordered the case continued to the February 19th, 2018, trial docket. Defendant Paul Thomas Garner filed a continuance request for illness on February 14th, 2018. Judge Kelly granted the continuance on February 15th, 2018. On March 19th, 2018, Attorney Damon C. Wlodarczyk was granted a request for an Order for Protection which was signed by The Court on that date.

On October 1st, 2018, the parties arrived at Court for the trial of the case. Before trial commenced, the parties came to an agreement and informed the trial judge, Judge Kelly that they had settled the case. The parties, through their legal counsel, placed the agreement of the parties on the record before Judge Kelly. On October 2nd, 2018, Judge Kelly signed an Order that

confirmed that the case had been settled. The Plaintiff filed a Motion to Enforce Settlement on November 20th, 2018, requesting that the Court issue an order enforcing the settlement agreement entered into by the parties in this action. The Motion is opposed by Defendant.

FACTUAL BACKGROUND:

This case arises out of significant surface water erosion issues caused by Defendant Garner's removal of storm water direction and capturing devices installed by the developer which caused water to channel directly onto Plaintiff's property in a single stream. The case was set for trial on October 1st, 2018, before Judge Kelly. The case settled on that morning prior to the commencement of trial. The terms of the settlement were put on the record. The terms of the settlement were that Defendant Thomas Garner was to pay $11,000.00 and Defendant Sterling Estates Homeowners Association was to pay $6,000.00. More importantly the parties agreed to jointly retain an engineer and contractor to install or move a storm water drainage drain on Mr. Garner's property to make it more effective. Specifically, the agreement on the record pursuant to the transcript was as follows:

> The Court: You have something that you need to put on the record? *Attorney Imhoff: "As you are aware, we have settled this case,"* (See Transcript of Proceeding, Page 4, Lines 7-8). *Mr. Imhoff continued, "The terms of the settlement monetarily aren't necessarily that important, although it's $11,000 from Thomas Garner and $6,000 from the Sterling* Estates Homeowners Association. What is more important and what we needed to put on the record, Your Honor, is that Mr. Garner and Mr. *Morgan have to work together, because they've agreed to*...They are going to move *that [a 3x3 drain covered by a 4x4 grate]... approximately* 10 feet over so that it collects the water. Right now it's ineffective where it is. It's going to move just right down the pipe, so it should be a fairly easy *thing to do, but we want that on the record.."* (See Transcript of Proceeding, Page 4, Lines 9-25). In terms of the hiring of a contractor, *Mr. Imhoff placed on the record, "I think what we have agreed to do is set* -- is set aside about $5,000 just as a general estimate and Mr. Garner and Mr. Morgan are going to hire the contractor who is going to do that work so that they both *have some degree of control over it. Obviously it's Mr. Garner's yard, so he wants some control over it and also obviously some* culpability if things go wrong...there is a place called Site Design with

Andy Sherard in Greenville that's not only engineers, but they also do the work." (See Transcript of Proceeding, Page 5, Lines 1-10). In regards to *the actual work to be done, Mr. Imhoff stated, "... I don't know how that's* going to be done, what it requires, how high it's going to be, how low it's going to be, but it needs a little bit of sloping around it to make more -- to make it more effective or not, and what I would suggest is that Mr. Morgan and Mr. Garner rely on the engineer or contractor that does it to *make it as effective as possible..."* (See Transcript of Proceeding, Page 5, Lines 17-23). Defense Counsel, Mr. Timmons, placed on the record his *only concerns as, "Mr. Garner does not want them to come in and do his yard. As you can see, it's sort of flat right there. We understand they may* have to drop down a little bit in order for the water to go in it, but he does not want -- just so long as that can be part of it, is that they are not going to re-grade his whole yard. We understand there may be some right around the grate that has to be done, but we don't -- right now, it's -- as you can see, it's relatively flat in the area where it's going have to be moved, and so we would like it to stay as flat as possible right there. (See Transcript of Proceeding, Pages 5, Line 25; Page 6, Lines 1-10). The Hon. *R Keith Kelly stated, "I think only engineering can tell you that. I'm not an* engineer." (See Transcript of Proceeding, Page 6, Lines 19-20). Mr. *Imhoff reassured the court, "It's not our intention to re*-grade his yard at all. As a matter of fact, we want to do it as cheaply and as quickly as *possible"* (See Transcript of Proceeding, Page 6, Lines 21-23). Near the end of the hearing, Mr. Timmons requested the Court take notice that this *agreement would end the litigation between the parties: "I would say once* this grate drain is moved, outside of some catastrophic coming in and doing something crazy in the yard, that this forever ends any type of water *issue, because we have all agreed to move it to this point..."* (See Transcript of Proceeding, Page 7, Lines 8-12). Both parties indicated their agreement that this would end the case (See Transcript of Proceeding Page 7, Lines 21-22). Judge Keith Kelly thanked the parties for their hard *work in settling the case, and he asked if there was "anything further?"* (See Transcript of Proceeding, Page 7, Lines 23-25; Page 8, Lines 1-4).

Based upon terms of the agreement, Mr. Garner and Mr. Morgan were to jointly hire a contractor and engineer to determine the scope and manner in which the work was to be performed so that it effectively controlled most, if not all of the water.

LAW:

South Carolina law establishes that settlement agreements are viewed as contracts; therefore, contract principles of law should be used to determine the parties intentions. Ecclesiastes Prod. Ministries v. Outparcel Assocs., LLC, 374 S.C. 483, 497, 649 S.E.2d 494, 501 (2007). Under South Carolina law a contract is an agreement entered into by two or more parties in which each party agrees to perform, or not to perform, certain acts. It may be shown by words, written or oral, or by conduct. However, a contract is more than the mere exchange of promises. For the agreement to be considered a contract, the parties must have intended to enter into a contract and must have reached a mutual understanding of the terms of that contract. This is sometimes called a meeting of the minds. The parties must intend to be mutually bound by the agreement. Stanley Smith & Sons v. Limestone College, 283 S.C. 430, 322 S.E.2d 474 (Ct. App. 1984). In construing a contract, the primary objective is to ascertain and give effect to the intention of the parties. Southern Atl. Fin. Servs., Inc. v. Middleton, 349 S.C. 77, 80-81, 562 S.E.2d 482, 484-85 (Ct. App. 2002). South Carolina common law requires that, in order to have a valid and enforceable contract, there must be a meeting of the minds between the parties with regard to all essential and material terms of the agreement. Patricia Grand Hotel, LLC v. MacGuire Enters., 372 S.C. 634, 638, 643 S.E.2d 692, 694 (2007). When contract language is not clear it is a matter of law for the court to determine whether the language is ambiguous. South Carolina Dep't of Natural Resources v. Town of McClellanville, 345 S.C. 617, 550 S.E.2d 299 (2001). A contract is ambiguous when it is capable of more than one meaning or when its meaning is unclear. Ellie, Inc. v. Miccichi, 358 S.C. 78, 94, 594 S.E.2d 485, 493 (Ct. App.2004). "[A]n ambiguous contract is one capable of being understood in more senses than one, an agreement obscure in meaning, through indefiniteness of expression, or having a double

meaning." Carolina Ceramics, Inc. v. Carolina Pipeline Co., 251 S.C. 151, 155-56, 161 S.E.2d 179, 181 (1968)). Once it is determined that the language is ambiguous, evidence may be admitted to show the intent of the parties. S.C. Dep't of Natural Res. v. Town of McClellanville, 345 S.C. 617, 623, 550 S.E.2d 299, 303 (2001). The Fourth Circuit Court of Appeals addressed a similar matter in which there was a dispute and an outline of the agreement was made part of the record. Ozyagcilar v. Davis, 701 F.2d 306, 307 (1983 U.S. App). The Appellate Court noted that the district court only retains the power to enforce complete settlement agreements; it does not have the power to impose, in the role of a final arbiter, a settlement agreement where there was never a meeting of the parties' minds. Ozyagcilar, 701 F.2d at 308. Where there has been no meeting of the minds sufficient to form a complete settlement agreement, any partial performance of the settlement agreement must be rescinded and the case restored to the docket for trial. Id.

ARGUMENTS OF COUNSEL:

Plaintiff contends that Plaintiff made numerous, immediate, attempts to carry out the terms of the agreement and that those attempts were thwarted by Defendant. Plaintiff further argues that Plaintiff had no other recourse but to bring this motion to request of the Circuit Court to enforce the Settlement Agreement. Plaintiff requests that the Court grant its motion to enforce settlement and order Defendant Garner to allow access to his property both for preparation of scope of repair and implementation of the scope of repair. Plaintiff further requests attorney's fees, costs, and sanctions against Defendant Garner for his willful obstruction of the settlement agreement. Plaintiff argues that based upon the obvious delay and obstruction by Defendant Garner, that Plaintiff is entitled to the following specific relief: that Defendant Garner be ordered to allow an

engineer of Plaintiff's choosing, Site Design, access to the property to do investigation, inspection, and present a proposed scope of repair; that Defendant Garner be ordered to comply with the scope of repair drafted by Site Design and give any contractor access to his property to implement the scope of repair; that Defendant Garner be ordered to pay attorney's fees, costs, and sanctions for intentionally and willfully obstructing implementation of the settlement agreement; and that the terms of the settlement agreement be enforced.

Defendant Garner, contends that there was no meeting of the minds between the parties. Defendant Garner, asserts the consensus reached between the parties on the record before Judge Kelly did not have a meeting of the minds necessary to form a settlement agreement. Defendant Garner argues that a settlement agreement is considered a valid and enforceable contract, requiring a meeting of the minds regarding all essential and material terms. Here, Defendant Garner asserts there was no meeting of the minds between himself and the Plaintiff. Defendant Garner contends that essential and material terms of the agreement were either ambiguous or not included in the discussion. Specifically, Defendant Garner claims there is still a dispute as to how the work would be completed, which Defendant asserts is an essential and material term. Defendant Garner argues that the lack of discussion regarding how the work would be completed equates to a failure of the minds to meet. It is his position that no enforceable settlement agreement exists because there was no meeting of the minds between the Plaintiff and Defendant Garner, as to the essential terms of the contract.

CONCLUSION:

The Court acknowledges and appreciates the amount of research and preparation for the hearing by counsel, as well as, the professionalism of counsel in their presentations to the Court.

After consideration of the record, the exhibits in evidence, memoranda, arguments of counsel, and the applicable law, as presented to the Court, it is the order of the Court that:

That the Court finds and concludes that the parties to this action reached a meeting of the minds and entered into a binding agreement; and further,

The Court finds that the Plaintiff attempted to honor the terms and conditions of the agreement in full; and further,

That Defendant Garner, is hereby ordered to make every effort to comply with the terms and conditions of the agreement by: allowing an engineer of Plaintiff's choosing access to the property to do an investigation, and an inspection, and present a proposed scope of repair; and by complying with the scope of repair drafted by the engineer; and giving the contractor access to his property to implement the scope of repair; and further

That issue of attorney's fees and costs to be awarded to Plaintiff associated with the bringing of this motion to enforce the settlement agreement shall be held in abeyance pending the extent of Defendant Garner's level of compliance with this Order within the next 30 days on or before October 7th, 2019.

IT IS SO ORDERED.

/s/Grace Gilchrist Knie
Honorable Grace Gilchrist Knie
Resident Judge, Seventh Judicial Circuit

September 7th, 2019
Spartanburg, South Carolina

Spartanburg Common Pleas

Case Caption: William A Morgan VS Sterling Estates Homeowners Association Inc , defendant, et al

Case Number: 2016CP4200727

Type: Order/Other

IT IS SO ORDERED.

S/GRACE GILCHRIST KNIE - 2760

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF SPARTABURG	)	
	)	
William A. Morgan,	)	CIVIL ACTION NO.: 2016-CP-42-00727
	)	
Plaintiff,	)	Order Regarding Defendant Garner's Motion for Reconsideration
	)	
v.	)	
	)	
Sterling Estates Homeowner's Association, Inc., and Paul Thomas Garner,	)	
Defendant/s.	)	
	)	

Court Reporter:	November 1st, 2019, @ 9:30 a.m.
Hearing Judge:	Grace Gilchrist Knie
Counsel for Plaintiff:	Jason Michael Imhoff
Counsel for Defendant/s:	J. Alex Timmons (Paul Thomas Garner)
Court Reporter:	Linda D. Moffitt

This matter came before the Court on November 1st, 2019, pursuant to a Rule 59 (e) SCRCP Motion to Alter or Amend Judgment filed with the Court on September 15th, 2019, on behalf of Defendant Paul Thomas Garner regarding an Order and Decision of the Court issued on September 6th, 2019. Defendant, Paul Thomas Garner, was represented by Attorney J. Alex Timmons of Willson Jones Carter and Baxley, PA. Plaintiff was represented by Attorney Jason M. Imhoff of the The Ward Firm. The Court Reporter was Linda D. Moffitt.

After careful consideration of the able arguments and filings of Counsel and review of the record, the Court is unable to discover any material fact or principle of law that either has been overlooked or disregarded and further finds no error of law or fact not appropriately considered. Accordingly, the Defendant Paul Thomas Garner's Motion, pursuant to Rule 59, SCRCP, filed with the Court on September 15th, 2019, is denied.

AND, IT IS SO ORDERED.

/s/Grace Gilchrist Knie
GRACE GILCHRIST KNIE
Resident Circuit Court Judge
Seventh Judicial Circuit

November 25th, 2019
Spartanburg, South Carolina

Spartanburg Common Pleas

Case Caption: William A Morgan VS Sterling Estates Homeowners Association Inc , defendant, et al

Case Number: 2016CP4200727

Type: Order/Other

IT IS SO ORDERED.

S/GRACE GILCHRIST KNIE - 2760

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF SPARTANBURG	)	CA#: 2016-CP-42-727
	)	
William A. Morgan,	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	**COMPLAINT**
Sterling Estates Homeowner's Association, Inc. and Paul Thomas Garner,	)	**(JURY TRIAL DEMANDED)**
	)	
Defendants.	)	

Plaintiff, William A. Morgan (collectively "Plaintiff") complaining of the Defendants Sterling Estates Homeowner's Association, Inc. and Paul Thomas Garner (collectively "Defendants") would respectfully show unto this Court as follows:

1. Plaintiff is citizen and resident of Spartanburg County, South Carolina, and owns and resides at 730 Sterling Drive, Boiling Springs, South Carolina.

2. Upon information and belief, Defendant Sterling Estates Homeowner's Association, Inc. (hereinafter "HOA") is a homeowner's association responsible for the governance and management of the Sterling Estates Subdivision.

3. Upon information and belief, Paul Thomas Garner is a citizen and resident of Spartanburg County, South Carolina and is the owner of property in the Sterling Estates Subdivision located at 736 Sterling Drive, Boiling Springs, South Carolina.

4. The residences and subdivision that is at the center of this dispute is located in Spartanburg County, South Carolina and the venue for initiating this matter is proper in Spartanburg County.

FACTUAL BACKGROUND

5. Plaintiff purchased his home in Sterling Estates approximately 18 years ago. In approximately 2008 significant water issues with continued development of the site that were remedied on multiple occasions by the developer and general contractor. This included the installation of special storm water drains to ensure that the water did not collect, pool, and run over Plaintiff's property in significant volume.

6. Sterling Estates Homeowner's Association was aware of this issue, the necessity for the installation of these storm water management drains and systems and Plaintiff's issues with his lot in the subdivision. Further, Sterling Estates Homeowner's Association drafted and ratified covenants, restrictions, and bylaws for governance and maintenance of the neighborhood which included sections related to storm water management.

7. At some point after Mr. Morgan's purchase of his property and installation of storm water management systems to protect his property, Defendant Garner purchased the home at 736 Sterling Drive. Thereafter, Garner modified and changed the grade of his property such that the existing storm water management design and installation between the properties is no longer effective or useful.

8. Additionally, the modifications and changes of the grade of the property direct water onto Plaintiff's property in such a volume that he is unable to maintain a lawn or vegetation or any other living thing and it is eroding Plaintiff's property.

9. Upon information and belief, HOA failed to prevent, oversee, and investigate the modifications of 736 Sterling Drive and failed to comply with the subdivision bylaws, covenants, and restrictions which require notice, approval, and oversight of the work done by Garner.

10. Mr. Morgan has attempted to amicably resolve the issue with the HOA to no avail and has not received any response.

FOR A FIRST CAUSE OF ACTION
(Negligence)

11. Plaintiff incorporates the allegations of the preceding paragraphs as if fully set forth herein verbatim.

12. All Defendants have a duty to Plaintiff to oversee modifications at 736 Sterling Drive in compliance with covenants, restrictions, bylaws, building codes, regulations, and industry standards such that it did not interfere with and damage Plaintiff's property.

13. Defendants were negligent, willful, wanton and reckless in one or more of the following particulars:

a. In failing to make modifications which did not harm Plaintiff or prevent storm water management ;

b. In failing to abide by, read, inspect, and analyze the covenants, bylaws, and restrictions of the neighborhood;

c. In failing to investigate, oversee, or analyze the proposed modification at 736 Sterling Drive;

d. Incorrectly designing the modifications at 736 Sterling Drive; and

e. In failing to investigate the storm water management system in the neighborhood to determine the plan for handling storm water and the as built conditions related to the modifications at 736 Sterling Drive.

All of which combined and contributed as a proximate cause of Plaintiff's damages.

14. Plaintiff is entitled to an award of actual, consequential, special and punitive damages in an amount to be determined.

FOR A SECOND CAUSE OF ACTION
(Negligence Per Se)

15. Plaintiff incorporates the allegations of the foregoing paragraphs as if fully repeated herein.

16. Associated with the construction of the landscaping, Defendants owed a duty to Plaintiff to complete the construction in accordance with local building codes.

17. Defendant failed to construct the landscape of the residence in accordance with local building codes as evidenced by the continued water runoff occurring at Plaintiff's residence, and as a result Defendant's negligent per se.

18. Defendant's negligence per se, as alleged above, directly and proximately caused property damage to Plaintiff's residence.

19. Therefore, Plaintiff is entitled to an aware of actual, consequential and special damages in an amount to be determined.

FOR A THIRD CAUSE OF ACTION
(Nuisance)

20. Plaintiff incorporates the allegations of the foregoing paragraphs as if fully repeated herein.

21. The water runoff across the Plaintiff's property is interfering with and continues to interfere with the Plaintiff's use and enjoyment of his property.

22. The Defendants' interference with the Plaintiff's use and enjoyment of his property is unreasonable.

23. As a result of the Defendants' interference, the Plaintiff has been unable to use and enjoy his property in a peaceful manner.

24. As a result of the Defendants' interference, the Plaintiff has suffered the diminution of the value of his real and personal property because of the water covering his real property.

25. The Defendants' continuing interference is the natural and proximate cause of the diminution in the value of the Plaintiff's real property.

26. The plaintiff is entitled to a judgment against the Defendants for the actual damages and punitive damages as well as an injunction against the Defendants from having water runoff onto Plaintiff's property.

FOR A FOURTH CAUSE OF ACTION
(Trespass)

27. Plaintiff incorporates the allegations of the preceding paragraphs as if fully set forth herein verbatim.

28. The water on Plaintiff's property was and continues to be a trespass on the Plaintiff's property.

29. The Defendants knew or should know of the conditions at the properties and the continued water onto Plaintiff's property from Defendant's property.

30. The water runoff onto Plaintiff's property is and continues to be a trespass on the Plaintiff's property.

31. The Defendants actions have been willful, wanton and in reckless disregard to the rights of the Plaintiff.

32. The Plaintiff's property has been diminished in value because of trespass.

33. The Plaintiff has suffered consequential damages resulting from the water runoff.

34. The Plaintiff is informed and believed that they are entitled to an judgment against Defendants for actual and punitive damages as well as an injunction from having water runoff onto Plaintiff's property.

FOR A FIFTH CAUSE OF ACTION
(Declaratory Judgment Action)

35. Plaintiff incorporate the allegations of the preceding paragraphs as if fully set forth herein verbatim.

36. Pursuant to South Carolina Code § 15 – 53 – 10 through § 15 – 53 – 140 and South Carolina Rules of Civil Procedure 57 Plaintiff requests a declaratory judgment finding that Defendants have failed to comply with the terms and conditions and restrictions, covenants, and bylaws of the neighborhood and failed to properly investigate, oversee, analyze, design and construct the modifications and grading done at 736 Sterling Drive and/or take the proper steps to approve or deny such application, if any, and/or investigate, or analyze the complaints of Plaintiff related to the work done at 736 Sterling Drive thereafter.

WHEREFORE, Plaintiffs pray for the following relief:

1. On the First Cause of Action, for an award of actual, consequential and special damages against Defendants in an amount to be determined at trial;
2. On the Second Cause of Action, for an award of actual, consequential, special and punitive damages against Defendants in an amount to be determined at trial;
3. On the Third Cause of Action, for an award of actual, consequential and special damages against Defendants in an amount to be determined at trial;
4. On the Fourth Cause of Action, for an award of actual, consequential and special damages against Defendants in an amount to be determined at trial;
5. On the Fifth Cause of Action, declaratory judgment finding that Defendants violated their obligations related to management, oversight, enforcement of the covenants restrictions bylaws neighborhood.
6. For a reasonable attorneys' fees and costs of this action; and

7. For such other further relief as this Court deems just and proper.

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jimhoff@wardfirm.com

Attorney for Plaintiffs

February 11, 2016
Spartanburg, South Carolina

STATE OF SOUTH CAROLINA COUNTY OF SPARTANBURG William A. Morgan, Plaintiff, vs. Sterling Estates Homeowner's Association, Inc., and Paul Thomas Garner, Defendants.	IN THE COURT OF COMMON PLEAS FOR THE SEVENTH JUDICAL CIRCUIT CASE NO.: 2016-CP-42-00727 **ANSWER** **(Jury Trial Demanded)**

The Defendant, Paul Thomas Garner, answering the Complaint of the Plaintiff, above named, and responding to the allegations as follows:

FOR A FIRST DEFENSE

1. Each and every allegation of the Complaint which is not specifically admitted, qualified or explained is denied and strict proof is demanded thereof.

2. That upon information and belief, the Defendant admits the allegations of paragraph 1 of the Complaint.

3. Responding to paragraph 2, that upon information and belief, the Defendant admits that the HOA is responsible for certain governance and management of the Sterling Estates Subdivision which would be set forth in the Declaration of Covenants and By-Laws. All allegations of paragraph 2 not admitted are denied.

4. The Defendant admits the allegations contained in paragraph 3 of the Complaint.

5. Inasmuch as the allegations contained in paragraph 4 are jurisdictional in nature and related to venue, the Defendant neither admits nor denies same but demands strict proof thereof.

6. The Defendant is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 5 and therefore must deny the same.

7. The Defendant is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 6.

8. Responding to paragraph 7, the Defendant admits he purchased the home at 736 Sterling Drive but denies the remaining allegations and demands proof thereof.

9. The Defendant denies the allegations contained in paragraph 8 of the Complaint.

10. The Defendant is without sufficient knowledge or information to form a belief as the truth of the allegations of paragraph 9.

11. The Defendant is without sufficient knowledge or information to form a belief as the truth of the allegations of paragraph 10.

12. Responding to paragraph 11, the Defendant restates and realleges his responses to the preceding paragraphs herein as if fully repeated verbatim.

13. The Defendant denies the allegations contained in paragraph 12 of the Complaint.

14. The Defendant denies the allegations contained in paragraph 13 (including all subparts) of the Complaint.

15. The Defendant denies the allegations contained in paragraph 14 of the Complaint.

16. Responding to paragraph 15, the Defendant restates and realleges his responses to the preceding paragraphs herein as if fully repeated verbatim.

17. The Defendant denies the allegations contained in paragraph 16 of the Complaint.

18. The Defendant denies the allegations contained in paragraph 17 of the Complaint.

19. The Defendant denies the allegations contained in paragraph 18 of the Complaint.

20. The Defendant denies the allegations contained in paragraph 19 of the Complaint.

21. Responding to paragraph 20, the Defendant restates and realleges his responses to the preceding paragraphs herein as if fully repeated verbatim.

22. The Defendant is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 21.

23. The Defendant denies the allegations contained in paragraph 22 of the Complaint.

24. The Defendant denies the allegations contained in paragraph 23 of the Complaint.

25. The Defendant denies the allegations contained in paragraph 24 of the Complaint.

26. The Defendant denies the allegations contained in paragraph 25 of the Complaint.

27. The Defendant denies the allegations contained in paragraph 26 of the Complaint.

28. Responding to paragraph 27, the Defendant restates and realleges his responses to the preceding paragraphs herein as if fully repeated verbatim.

29. The Defendant is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 28.

30. The Defendant denies the allegations contained in paragraph 29 of the Complaint.

31. The Defendant denies the allegations contained in paragraph 30 of the Complaint.

32. The Defendant denies the allegations contained in paragraph 31 of the Complaint.

33. The Defendant denies the allegations contained in paragraph 32 of the Complaint.

34. The Defendant denies the allegations contained in paragraph 33 of the Complaint.

35. The Defendant denies the allegations contained in paragraph 34 of the Complaint.

36. Responding to paragraph 35, the Defendant restates and realleges his responses to the preceding paragraphs herein as if fully repeated verbatim.

37. Paragraph 36 is a statement of law and does not require a response from this Defendant. To the extent a response is required from the Defendant, the Defendant denies the allegations contained in paragraph 36.

38. The Defendant denies Plaintiff's prayer for relief (including all subparts) and demands proof thereof.

FOR A SECOND DEFENSE
(Reservation and Non-Waiver)

39. The allegations contained in the preceding paragraphs are incorporated herein as if fully repeated verbatim.

40. Defendant has not had an opportunity to conduct a thorough investigation or to engage in sufficient discovery regarding the circumstances of the Plaintiff's allegations. Accordingly, Defendant reserves the right to amend this Answer to assert additional defenses as may arise during the discovery process.

FOR A THIRD DEFENSE
(Punitive Damages Unconstitutional - Procedural Due Process)

41. The allegations contained in the preceding paragraphs are incorporated herein as if fully repeated verbatim.

42. To the extent that the Complaint seeks punitive or exemplary damages, it violates the right of the Defendant to procedural due process under the Fourteenth Amendment of the United States Constitution and the Constitution of the State of South Carolina, and therefore fails to state a cause of action upon which either exemplary or punitive damages can be awarded.

FOR A FOURTH DEFENSE
(Punitive Damages Unconstitutional - Substantive Due Process)

43. The allegations contained in the preceding paragraphs are incorporated

herein as if fully repeated verbatim.

44. To the extent that the Complaint seeks punitive or exemplary damages, it violates the Defendant's right to substantive due process as provided in the Fifth and Fourteenth Amendments of the United States Constitution and the Constitution of the State of South Carolina, and therefore fails to state a cause of action upon which either exemplary or punitive damages can be awarded.

FOR A FIFTH DEFENSE
(Failure to State a Claim)

45. The allegations contained in the preceding paragraphs are incorporated herein as if fully repeated verbatim.

46. The Complaint fails to state facts sufficient to constitute a cause of action and the Complaint should be dismissed pursuant to the provisions of SCRCP Rule 12(b)(6).

FOR A SIXTH DEFENSE
(Failure to Mitigate Damages)

47. The allegations contained in the preceding paragraphs are incorporated herein as if fully repeated verbatim.

48. That the Plaintiff has failed to take prompt and reasonable action under the circumstances to avoid the occurrence of additional damages and such failure to mitigate damages constitutes a complete defense as to that portion of damages which could have been otherwise avoided by reasonable and prompt action on the part of the Plaintiff.

FOR A SEVENTH DEFENSE
(Comparative Negligence)

49. The allegations contained in the preceding paragraphs are incorporated herein as if fully repeated verbatim.

50. That the damages sustained by the Plaintiff, if any, were due to and caused by and were the direct and proximate result of the negligence, carelessness, recklessness, willfulness and wantonness of Plaintiff, and recovery should be barred or reduced in proportion to Plaintiff's negligence as provided by law.

FOR AN EIGHTH DEFENSE
(Comparative Negligence Reduction)

51. The allegations contained in the preceding paragraphs are incorporated herein as if fully repeated verbatim.

52. In the event the alleged negligence of the Defendant operated as a fifty (50%) percent or greater proximate cause of the accident, which is expressly denied and admitted solely for the purpose of this defense, Defendant is entitled to a reduction of any amount awarded to Plaintiff in an amount equal to that percentage of his negligence, recklessness and carelessness.

FOR A NINTH DEFENSE
(Negligence of Third Party)

53. The allegations contained in the preceding paragraphs are incorporated herein as if fully repeated verbatim.

54. Plaintiff's alleged damages were directly and proximately caused by a party other than this Defendant, who cannot be held liable for the negligence of others.

FOR A TENTH DEFENSE
(Common Enemy Rule)

55. The claims of the Plaintiff are barred in whole or in part by the common enemy rule.

FOR AN ELEVENTH DEFENSE
(Acts and/or Omissions of Others)

56. Plaintiff's Complaint is barred in whole or in part because the actions and/or omissions of others over whom the Defendant had no control.

FOR A TWELFTH DEFENSE
(Economic Loss)

57. The Defendant raises the doctrine of economic loss as a limitation on Plaintiff's ability to recover.

FOR A THIRTEENTH DEFENSE
(Estoppel / Laches)

58. Plaintiff's Complaint is barred by the Doctrine of Estoppel and/or Laches.

FOR A FOURTEENTH DEFENSE
(Statute of Limitations / Statute of Repose)

59. Plaintiff's Complaint is barred by the applicable Statute of Limitations and/or the applicable Statute of Repose.

FOR A FIFTEENTH DEFENSE
(Unclean Hands)

60. The Defendant pleads the Doctrine of Unclean Hands as a complete bar to Plaintiff's Complaint.

FOR A SIXTEENTH DEFENSE
(Waiver)

61. The Defendant raises the doctrine of waiver as a partial or complete bar to the claims presented in Plaintiff's Complaint.

FOR A SEVENTEENTH DEFENSE
(Absence of Causation)

62. The Defendant pleads the absence of a legal or proximate cause as a complete defense to Plaintiff's claims for negligence.

WHEREFORE, having fully answered the Complaint of the Plaintiff, the Defendant prays for a trial by jury and that the Plaintiff's Complaint be dismissed, together with the costs and disbursements of this action and for such other and further relief as this Court may deem just and proper.

CLAWSON and STAUBES, LLC

J. Alex Timmons, Bar No.: 77446
1000 E North Street, Suite 200
Greenville, South Carolina 29601-3106
Phone: (864) 331-8940
Fax: (864) 232-2921
Email: atimmons@clawsonandstaubes.com
Attorney for Defendant Paul Thomas Garner

Greenville, South Carolina

May 4, 2016

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF SPARTANBURG)	CA#: 2016-CP-42-0727
)	
William A. Morgan,)	
)	
Plaintiff,)	
)	NOTICE OF MOTION AND MOTION
v.)	TO ENFORCE SETTLEMENT
)	
Sterling Estates Homeowner's Association, Inc. and Paul Thomas Garner,)	
)	
Defendants.)	
)	

TO: THE DEFENDANTS PAUL THOMAS GARNER AND HIS ATTORNEY, ALEX TIMMONS AND STERLING ESTATES HOMEOWNER'S ASSOCIATION, INC. AND ITS ATTORNEY, DAMON C. WLODARCZYK

You will please take notice that the undersigned attorney for the Plaintiff will move before the resident or presiding judge of the Greenville Court of Common Pleas on the tenth day after service hereof, or as soon thereafter as counsel may be heard, at such time and place as the court may determine for an order enforcing the settlement agreement entered into by the parties in this action. This motion will be based upon the following grounds:

1. The parties in this action entered into a settlement agreement on the record before the Honorable Keith Kelly.

2. The terms of the settlement agreement are clear and unambiguous.

3. The terms of the settlement agreement provide that if the Plaintiff, through his attorney, and through settlement negotiations, would dismiss its action, the Defendant would allow an engineer access to the property to provide a proposal for repair. Defendant may request revisions or changes. A contractor would then perform the repair based upon the engineering.

4. Subsequent to the settlement agreement, Plaintiff William A. Morgan took steps and expended money with the intention of resolving the claim and performing the terms of the settlement agreement (Exhibit A).

5. Defendant Garner's counsel has yet to prepare a Release pursuant to the settlement agreement.

6. Defendant Garner refuses to provide access to the property so that an engineering firm can "shoot elevations" to provide a proposal (Exhibit A).

7. The Plaintiff requests an order directing the Defendant Garner to comply with the terms of the settlement agreement and allow access to the property to take measurements and elevations.

8. The Plaintiff seeks damages consisting of the cost of complying with the settlement terms as well as attorney's fees and costs associated to bring this motion.

9. This Motion to Enforce the Settlement Agreement should be granted as a matter of law.

This Motion will be based upon the pleadings which have been filed in this action, the letters attached hereto, and upon the applicable statutory and common law and the agreement previously put on the record.

Jason M. Imhoff (S.C. Bar #69355)
The Ward Law Firm, P.A.
P.O. Box 5663
Spartanburg, SC 29304-3188
Telephone (864) 582-3075
Facsimile (864) 585-3090

Attorney for Plaintiff William A. Morgan

November 20, 2018

Jason Imhoff

From: Jason Imhoff
Sent: Wednesday, October 24, 2018 3:23 PM
To: Alex Timmons
Subject: Re: can we get on the property tomorrow?

Can we please get some dates that work for Mr. Garner?

Again, this is simply investigative so Site Design can present proposals to Garner and Morgan. No work will be done or decisions made - it's simply fact gathering for a proposal to them.

On Oct 24, 2018, at 2:38 PM, Alex Timmons <jatimmons@wjlaw.net> wrote:

> Mr. Garner is out of the country and will not give permission for anyone to go out there without him. He wants to make sure he is there so he can talk to whomever is coming out so he can have a part of the decision and discussion because it is his property.
>
> Alex
>
> Sent from my iPhone
>
> On Oct 24, 2018, at 2:09 PM, Jason Imhoff <JImhoff@wardfirm.com> wrote:

Jason Imhoff

From: Jason Imhoff
Sent: Tuesday, October 30, 2018 10:49 AM
To: 'Alex Timmons'
Cc: damonw@rplfirm.com; 'sandman719@att.net'
Subject: Sandy Morgan

Gentlemen, as you may know we have tentatively retained Site Design. Craig Winnell of Site Design has seen the yard by looking over the fence and needs to send a crew to shoot elevations. That work should take 30 minutes and will be scheduled in the next two weeks. Once Site Design has the elevations an engineer will produce a scope of repair to be submitted to the county and used by the repair contractor. We will let you know when Site Design can go to the property. We've asked for at least one week notice.

Obviously Mr. Garner is welcome to call Site Design and Mr. Winnell; however, this initial work is only investigative. The scope of repair won't be produced until after the site visit which may be a more appropriate time for Mr. Garner to speak with Site Design. Also, keep in mind that Site Design bills by the hour.

Please let me know if you have any questions. Also, let us know if the HOA wants to be involved in the project as it is solving an issue for numerous homeowners left unaddressed by the board.

Jason Michael Imhoff
The Ward Law Firm, P.A.
233 S. Pine Street
P.O. Box 5663
Spartanburg, SC 29304

(864) 582-3075

jimhoff@wardfirm.com
CONFIDENTIAL & PRIVILEGED

Jason Imhoff

From: Jason Imhoff
Sent: Monday, November 19, 2018 11:43 AM
To: 'Alex Timmons (ATimmons@clawsonandstaubes.com)'
Subject: FW: Sterling Estates Case Number: 2016-CP-42-0727

Anything to report? Can we please let Site Design on site to get the elevations?

From: Jason Imhoff
Sent: Friday, November 16, 2018 10:38 AM
To: Clay Jones; jatimmons@wjlaw.net; damonw@rplfirm.com
Cc: sandman719@att.net
Subject: RE: Sterling Estates Case Number: 2016-CP-42-0727

Alex,

I just left you a message and tried to contact your legal assistant and paralegal, to no avail. We are getting impatient waiting for dates or approval from Mr. Garner to simply shoot elevations in his yard. That team is not making any decisions they are simply gathering information for the engineer to develop a proposal. If Mr. Garner would like to speak to Mr. Jones or anyone else at Site Design before giving approval we would ask that he do so. (contact information below) Otherwise we need dates next week or I've been asked to file a motion and seek attorney fees.

Jason Michael Imhoff
The Ward Law Firm, P.A.
233 S. Pine Street
P.O. Box 5663
Spartanburg, SC 29304

(864) 582-3075

jimhoff@wardfirm.com

From: Jason Imhoff
Sent: Wednesday, November 14, 2018 2:32 PM
To: Clay Jones; jatimmons@wjlaw.net; damonw@rplfirm.com
Cc: sandman719@att.net
Subject: Re: Sterling Estates Case Number: 2016-CP-42-0727

Alex, can you help with this please and let us know when Mr. Garner will let site design on the property?

On Nov 14, 2018, at 2:05 PM, Clay Jones <cjones@sitedesign-inc.com> wrote:

> Jason,
>
> I need to set up our site visit to Survey the property in questions so that our Civil Engineers can design the new layout. We would like to set this up for a morning next week at 9 am Monday-Wednesday. Can you assist with this?
>
> Thanks,
>
> A. Clay Jones, PLS
> Director of Surveying, Partner
>
> SITE DESIGN, INC.
> CIVIL ENGINEERS • SURVEYORS • LANDSCAPE ARCHITECTS
> 800 E. WASHINGTON ST., STE B, GREENVILLE, SC 29601
> O) 864-271-0496 F) 864-271-0402
>
> WWW.SITEDESIGN-INC.COM

Jason Imhoff

From: Jason Imhoff
Sent: Monday, November 19, 2018 12:56 PM
To: Alex Timmons; damonw@rplfirm.com
Subject: Fwd: Sterling Estates

Heads up. I've got to file a motion

From: Craig Winnall <cwinnall@sitedesign-inc.com>
Date: November 19, 2018 at 11:44:10 EST
To: "Wm. A. Sandy Morgan" <sandman719@att.net>
Cc: Clay Jones <cjones@sitedesign-inc.com>
Subject: RE: Sterling Estates

Sandy,

Hope you're doing well. Received a call last week from your neighbor and was finally able to call him back just now. According to him no one from our firm is allowed to be on his property. He mentioned he hadn't seen the settlement and doesn't know the outcome. Not sure where you want us to go from here, but from what he told me it looks like we won't be able to survey until this is resolved. He stated you "prematurely" hired us. Let us know when this is resolved and we'll move forward. Thanks.

Craig S. Winnall, P.E

From: Wm. A. "Sandy" Morgan <sandman719@att.net>
Sent: Wednesday, October 24, 2018 7:54 AM
To: 'Craig Winnall' <cwinnall@sitedesign-inc.com>
Subject: RE: Sterling Estates

Perfect! See you Thursday @ 1:00.

From: Craig Winnall [mailto:cwinnall@sitedesign-inc.com]
Sent: Tuesday, October 23, 2018 17:35
To: Wm. A. Sandy Morgan
Subject: RE: Sterling Estates

1 pm.

Craig S. Winnall, P.E

From: Wm. A. "Sandy" Morgan <sandman719@att.net>
Sent: Tuesday, October 23, 2018 5:19 PM
To: 'Craig Winnall' <cwinnall@sitedesign-inc.com>

Cc: sandman719@att.net
Subject: RE: Sterling Estates

That works for me. I'll have to clear it with my neighbor but don't foresee a problem.
Let's plan on that. Do you have a general time frame of your arrival?

Wm. A."Sandy" Morgan
Custom Production Services
730 Sterling Dr
Spartanburg, SC 29316
(864)814-1221 (Office)
(864)814-1219 (Fax)
(864)542-3228 (Cell)
Sandman719@att.net

From: Craig Winnall [mailto:cwinnall@sitedesign-inc.com]
Sent: Tuesday, October 23, 2018 17:05
To: Wm. A. Sandy Morgan
Subject: RE:

Is Thursday a good time? We'll be in Spartanburg in the morning for a meeting and could then just head over to Boiling Springs.

Craig S. Winnall, P.E

From: Wm. A. "Sandy" Morgan <sandman719@att.net>
Sent: Tuesday, October 23, 2018 10:41 AM
To: cwinnall@sitedesign-inc.com
Subject: FW:

From: Jason Imhoff [mailto:JImhoff@wardfirm.com]
Sent: Tuesday, October 23, 2018 9:52 AM
To: 'sandman719@att.net'
Subject:

These are just the final plats, but it shows the drains and pipe. She's going to look for the site plan.

STATE OF SOUTH CAROLINA COUNTY OF SPARTANBURG William A. Morgan, Plaintiff, vs. Sterling Estates Homeowner's Association, Inc., and Paul Thomas Garner, Defendants.	IN THE COURT OF COMMON PLEAS FOR THE SEVENTH JUDICAL CIRCUIT CASE NO.: 2016-CP-42-00727 **DEFENDANT PAUL GARNER'S NOTICE OF MOTION AND MOTION TO RECONSIDER ORDER DATED SEPTEMBER 7, 2019, AND MEMORANDUM IN SUPPORT OF MOTION**

PLEASE TAKE NOTICE that the Defendant Paul Garner (hereinafter "Defendant"), by and through his undersigned attorney, shall, and hereby does, move this Honorable Court pursuant to Rule 59(e), South Carolina Rules of Civil Procedure, to reconsider the Order of this Court signed September 7, 2019, and filed and served on counsel September 6, 2019 (hereinafter "The Order").

This Motion is based upon the pleadings in the within action, memorandum in support of this motion and attachments thereto, upon Rule 59(e) of the South Carolina Rules of Civil Procedure, and upon such additional law and argument as shall be appropriate. The grounds for the motion are that the Court failed to consider the totality of the evidence and abused its discretion in granting the motion.

PROCEDURAL BACKGROUND

The Order ruled on Plaintiff's Motion to Enforce Settlement which was filed on November 20, 2018. Arguments on the Motion were heard on August 16, 2019. Plaintiff's counsel filed his Brief in Support of the Motion on August 15, 2019 at approximately 3:30 p.m. the day prior to the hearing on August 16, 2019 at 9:30 a.m., less than 24 hours before the

hearing. The matter was argued to Judge Grace Knie on Friday, August 16, 2019 at 9:30 a.m. During arguments the court granted Defense counsel the opportunity to file a Memorandum in Opposition to the Motion and such Memorandum was filed on Tuesday, August 20, 2019.

The Court issued the Order on September 6, 2019 stating the following: the parties reached a meeting of the minds and entered into a binding agreement; Plaintiff attempted to honor the terms and conditions of the agreement in full; Defendant was ordered to comply with terms and conditions of agreement by allowing an engineer of Plaintiff's choosing to access the Defendant's real property and present a proposed scope of repair, comply or agree to the scope of repair drafted by the engineer and give contractor access to Defendant's property to implement the scope of repair; and the issue of attorney's fees and costs be held in abeyance pending the extent of Defendant's compliance with the Order within 30 days or before October 7, 2019.

ARGUMENT

1. The Court failed to consider the totality of the evidence

The Court clearly stated in the Order that South Carolina law holds that settlement agreements are viewed as contracts and therefore contract principles of law should be used to determine what the parties intended. *Ecclesiastes Prod. Ministries v. Outparcel Assocs., LLC*, 374 S.C. 483, 497, 649 S.E.2d 494, 501, (2007). South Carolina common law requires that, in order to have a valid and enforceable contract, there must be a mutual understanding of the terms of the contract, otherwise called a meeting of the minds, between the parties with regard to *all* essential and material terms of the agreement. *Patricia Grand Hotel, L.L.C. v. MacGuire Enters., Inc.*, 372 S.C. 634, 638, 643 S.E.2d 692, 694 (Ct. App. 2007) (Emphasis added). "The meeting of minds required to make a contract must be based on purpose and intention which has been made known or which, from all the circumstances, should be known. *Byrd v. Livingston*,

398 S.C. 237, 243, 727 S.E.2d 620, 622-623, (Ct. App. 2012) (quoting *Player v. Chandler*, 299 S.C. 101, 105, 382 S.E.2d 891, 894 (1989)). "The intention of the parties should be determined from the surrounding circumstances, as well as from the testimony of all the witnesses; and subsequent acts are relevant to show whether a contract was intended." *Wright v. Trask*, 329 S.C. 170, 178, 495 S.E.2d 222, 226 (Ct. App. 1997).

Furthermore, when contract language is not clear it is a matter of law for the court to determine whether the language is ambiguous. *South Carolina Dep't of Natural Resources v. Town of McClellanville*, 345 S.C. 617, 550 S.E.2d 299 (2001). A contract is ambiguous when it is capable of more than one meaning or when its meaning is unclear. *Ellie, Inc. v. Miccichi*, 358 S.C. 78, 94, 594 S.E.2d 485, 493. ([A]n ambiguous contract is one capable of being understood in more senses than one, an agreement obscure in meaning, through indefiniteness of expression, or having a double meaning." *Carolina Ceramics, Inc. v. Carolina Pipeline Co.*, 251 S.C. 151, 155-56, 161 S.E.2d 179, 181 (1968)). Once it is determined that the language is ambiguous evidence may be admitted to show the intent of the parties. *S.C. Dep't of Natural Res. v. Town of McClellanville*, 345 S.C. 617, 623, 550 S.E.2d 299, 303, (2001).

Where there has been no meeting of the minds sufficient to form a complete settlement agreement, the case should be restored to the docket for trial. *Ozyagcilar v. Davis*, 701 F.2d 306, 307, (1983 U.S. App).

It is clear from the totality of the evidence there was never a meeting of the minds in this matter. The agreement that was placed on the record on October 1, 2018 did not provide all the essential and material terms of the agreement but was broad overview of the agreement. There is no dispute from Defendant that he agreed on the record to work with Plaintiff to move the stormwater grate to a new location but there was never an agreement on the record that the Defendant agreed to any specific engineer/contractor, how the work was to be completed or that

the intention of the Defendant was to do whatever an engineer came up with as the scope to make the drain effective. Plaintiff's counsel clearly gave his opinion that the parties rely on whatever the engineer or contractor suggested to make the drain most effective but nowhere in the on the record agreement is there confirmation that the Defendant agreed to rely on whatever the engineer or contractor suggested as a repair.(See Transcript of Proceeding, Page 5, Lines 17-23). It was clear that it was in dispute as to the scope of repair that was to be done as directly stated on the record by Plaintiff's counsel. (See Transcript of Proceeding, Page 5, Lines 15-18).

It is clear in this matter determining the parties' intentions based on the surrounding circumstances and subsequent acts that the parties never had a meeting of the minds. *Wright v. Trask*, 329 S.C. at 178. The Defendant has vehemently denied during the entire period of this case and even before the matter was filed that he never did anything to cause the issues that the Plaintiff is claiming. The Defendant's intentions in the agreement on the record was always to allow the stormwater grate to be moved down the drain line to a new location and that was the extent of his agreement. He did not intend to allow his yard to have grading done to make the new location of the grate a "fix" to the problems the Plaintiff claimed. He understood that based on moving a large 4'x4' grate with large cement drain box would require minimal grading in very close proximity to where the hole was dug and drain placed in the new location but that was the extent of the grading he intended to be allowed. Plaintiff's counsel confirmed that they did not want to re-grade the Defendant's yard. (See Transcript of Proceeding, Page 6, Lines 21-22).

It is clear from the evidence following October 1, 2018 that Defendant never agreed to Site Design as was potentially proposed in a suggestion from Plaintiff's counsel in the on the record statement. In working together to determine an engineer the Defendant did his due diligence on the engineer, Site Design, as proposed by Plaintiff and determined that he did not

want the potential liability of an engineer who had been involved in multiple litigation battles to do the work on his property. Ultimately, the parties agreed on an engineer, Clay Helms, of Summit Engineering, to perform the site design. As is evident from Defendant's Exhibit B to their Memorandum in Opposition after Mr. Helms spoke to both parties it was clear to Mr. Helms that the parties clearly intended two different scopes of repair. This is also evidenced by Plaintiff's Exhibit O from their Brief in Support which notes in an email from Mr. Helms to Mr. Garner and Plaintiff's Counsel, "It seems that there may still be some unresolved issues (between the two parties) on how the stormwater issue should be resolved." The scope of repair, which would be an essential and material term of the agreement, that was pointed out in the on the record agreement as being in dispute was actually in dispute or an unresolved issue indicating there was never a meeting of the minds on all the essential terms of the agreement in order to form a valid and enforceable contract. (See Transcript of Proceeding, Page 5, Lines 15-18).

The agreement that was placed on the record is unclear and capable of more than one meaning and is therefore ambiguous. The Court in this matter referenced in the Order contract law principles dealing with ambiguity but never made a ruling on whether the language was ambiguous. The evidence in this matter shows that the agreement was ambiguous. The parties each took a different meaning as to the language that was placed on the record giving evidence to the multiple meanings of the language. Because the agreement is ambiguous further evidence as discussed above must be looked at to determine the intent of the parties. The evidence which reveals that the parties each intended something different from the agreement and never had a meeting of the minds.

The intentions of the parties as evidenced by the subsequent acts and surrounding circumstances clearly show that there was never a meeting of the minds or mutual understanding on all the essential and material terms of the agreement. Because there was never a meeting of the

minds to form a valid and enforceable agreement this matter should have been restored to the docket for trial rather than Plaintiff's Motion to Enforce Settlement being partially granted.

2. The Court abused its discretion in granting the motion

The role of a court in enforcing settlement agreements is "to find, if [it] can the terms of the complete settlement agreement, or to determine that there was none." *Ozyagcilar v. Davis*, 701 F.2d 306, 308, (1983 U.S. App.) (quoting *Wood v. Virginia Hauling Co.*, 528 F.2d 423, 425 (4 Cir. 1975) (emphasis in original). It is improper for a court on its own or with the consent of the parties to place itself in the role of a "final arbiter" of a settlement agreement. *Ozyagcilar,* 701 F.2d at 308. It is the role of the court, after a hearing, to determine if there was a settlement agreement between the parties and, if so, to determine the terms and the conditions of the agreement of the parties. *Id.*

The agreement placed on the record on October 1, 2018 clearly states that the parties were going to work together in moving the stormwater drain. (See Transcript of Proceeding, Page 4, Lines 14-15). They were furthermore to jointly hire an engineer/contractor so that both parties would have some degree of control over the work. The Defendant wanted control in the decision because this compromise agreement was going to involve his property. (See Transcript of Proceeding, Page 5, Lines 3-7). The Defendant never agreed that he would be willing to accept whatever scope an engineer proposed in this matter and allow such scope to be implemented in his yard.

The Order of the Court in this matter ordered the Defendant to allow the following: 1. Allow the Plaintiff to unilaterally choose an engineer to do an investigation and inspection on the Defendant's property; 2. Allow said engineer to present a scope of repair; 3. Defendant to comply with the proposed scope of repair as presented by the unilaterally chosen engineer; and 4.

Allowing a contractor to enter his yard and implement the scope of repair as presented by the unilaterally chosen engineer. (See The Order, Page 8). No part of the Order of the court involves working together. The Order allows the Plaintiff in this matter to have all the control of what is to occur on the Defendant's property. The Court has taken a role as final arbiter in this matter and has come up with its own terms to this agreement. Nowhere was it ever agreed that the Defendant would have no control over the persons who were going to enter onto his property whether to inspect, investigate or do work. It was clearly indicated that the Defendant wanted some control over it because it was his yard. Nothing in the Order gives the Defendant any control over who enters his property or is what to be done on his property. The Order further forces the Defendant to accept a scope of work, whether he agrees to it or not, and allow that scope to be implemented on his property. This is another point which was never agreed to and was mentioned as a point of dispute on the record. The Court by the Order has granted the Plaintiff a legal right to enter and control what is to be completed on the Defendant's property. This was never agreed to by the Defendant and would have never been agreed to in a matter in which the Defendant has vehemently denied the claims of the Plaintiff.

The Court in this matter has abused its discretion and become a final arbiter ordering the Defendant to terms and conditions which were never part of an agreement. The Court has allowed the Plaintiff to have complete control and taken any control away from the Defendant. The only control the Court has left with the Defendant is for the Defendant to allow the Plaintiff to have all the control as to what is to occur on the Defendant's property. The Court has taken away the Defendant's right to control his own property which was never and would have never been a part of any agreement in this matter.

CONCLUSION

For the reasons set forth above, the Court should reconsider its Order dated September 7, 2019, and deny the Plaintiff's Motion to Enforce Settlement and restore the matter to the docket for trial.

Respectfully submitted,

WILLSON JONES CARTER & BAXLEY, P.A.

s/ J. Alex Timmons
J. Alex Timmons, S.C. Bar No.: 77446
872 S. Pleasantburg Drive
Greenville, SC 29607
Phone: (864) 908-3814
Fax: (864) 241-5372
Email: jatimmons@wjlaw.net
Attorney for Defendant Paul Garner

Greenville, South Carolina

September 15, 2019

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

WILLIAM MORGAN,)
)
PLAINTIFF,) TRANSCRIPT OF RECORD
) 2016-CP-42-00727
-vs-)
) OCTOBER 1, 2018
STERLING ESTATES) SPARTANBURG, SOUTH CAROLINA
HOMEOWNERS ASSOCIATION,)
INC., PAUL THOMAS)
GARNER,)
)
DEFENDANTS.)

B E F O R E:

THE HONORABLE R. KEITH KELLY, JUDGE.

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

JASON IMHOFF, ESQUIRE
ATTORNEY FOR THE PLAINTIFF

J. ALEX TIMMONS, ESQUIRE
ATTORNEY FOR DEFENDANT STERLING ESTATES
HOMEOWNERS ASSOCIATION, INC.

DAMON WLODARCZYK, ESQUIRE
ATTORNEY FOR DEFENDANT PAUL THOMAS GARNER

MICHAEL R. WATTS
CIRCUIT COURT REPORTER

INDEX

WITNESSES	PAGE
(NO WITNESSES CALLED)	

EXHIBITS

NO.	DESCRIPTION	ID.	EV.
(NO EXHIBITS MARKED)			

(PROCEEDINGS, OCTOBER 1, 2018).

THE COURT: You have something that you need to put on the record?

MR. IMHOFF: We do, Your Honor.

If it please the court, Your Honor, Jason Imhoff on behalf of Sandy Morgan, plaintiff.

As you are aware, we have settled this case, Your Honor.

The terms of the settlement monetarily aren't necessarily that important, although it's 11,000 from Thomas Garner and 6,000 from the Sterling Estates Homeowners Association.

What is more important and what we needed to put on the record, Your Honor, is that Mr. Garner and Mr. Morgan have to work together, because they've agreed to -- and I could show you a photograph, if you would like, but essentially there is an ineffective --

Mr. Garner, two-foot drain or three --

MR. GARNER: The drain itself is 3 x 3 covered by a 4 X 4 grate.

MR. IMHOFF: Okay. So they are going to move that approximately ten feet over so that it collects the water. Right now it's ineffective where it is. It's going to move just right down the pipe, so it should be a fairly easy thing to do, but we want that on the record.

I think what we have agreed to do is set -- is set aside about $5,000 just as a general estimate and Mr. Garner and Mr. Morgan are going to hire the contractor who is going to do that work so that they both have some degree of control over it. Obviously it's Mr. Garner's yard, so he wants some control over it and also obviously some culpability if things go wrong.

I know, and Mr. Timmons may know, there is a place called Site Design with Andy Sherard in Greenville that's not only engineers, but they also do the work. I don't know how expensive they are, but that's something that I will throw out to these gentlemen, depending on the price of that.

But, anyway, that's the idea.

The only thing that I would add, which might -- which Mr. Timmons tells me may be in a little bit of dispute is I don't know how that's going to be done, what it requires, how high it's going to be, how low it's going to be, whether it needs a little bit of sloping around it to make more -- to make it more effective or not, and what I would suggest is that Mr. Morgan and Mr. Garner rely on the engineer or the contractor that does it to make it as effective as possible, Your Honor.

MR. TIMMONS: In some ways that would be the one part that Mr. Garner does not want them to come in and do

his yard. As you can see, it's sort of flat right there. We understand that they may have to drop it down a little bit in order for the water to go in it, but he does not want -- so as long as that can be part of it, is that they are not going to re-grade his whole yard.

We understand there may be some right around the grate that has to be done, but we don't -- right now, it's -- as you can see, it's relatively flat in the area where it's going to have to be moved, and so we would like it to stay as flat as possible right there.

THE COURT: Sure.

MR. IMHOFF: Yeah, I would say within five feet, or less.

MR. GARNER: I don't want my yard elevated five feet, no.

MR. IMHOFF: No, no, no. No, we are not going to elevate the yard. No, I'm talking about just sloping the yard into the drain when it's moved, within --

THE COURT: I think only engineering can tell you that. I'm not an engineer.

MR. IMHOFF: But it's not our intention to re-grade his yard at all. As a matter of fact, we want to do it as cheaply and as quickly as possible.

THE COURT: Sure.

MR. IMHOFF: One last thing, Your Honor. The

Homeowners Association I think has agreed to cooperate in any way they can. They may need to get with county. I'm not sure, and get some permits or do some approvals or something like that.

THE COURT: Okay.

MR. WLODARCZYK: Very briefly.

I believe whatever manner is possible.

MR. TIMMONS: One last thing. I would say once this grate drain is moved, outside of some catastrophic coming in and doing something crazy in the yard, that this forever ends any type of water issue, because we have all agreed to move it to this point. So if there is some water that bypasses it somehow, outside of some type of -- outside of normal usage of the yard, that this is forever and we can't come back here for any type of other suit.

MR. IMHOFF: Yeah, we would agree to that. It would have to -- Mr. Garner or someone else would have to do something to make that drain ineffective again, which is --

THE COURT: I think the -- I think the case law calls it a common end.

MR. IMHOFF: That's right.

MR. TIMMONS: Yes.

THE COURT: All right. Thank you, gentlemen, so very much. You have worked hard on this. I know, because I was back there listening to you and I appreciate all of you.

I really do.

And gentlemen, congratulations on settling this case.

All right. Anything further?

MR. IMHOFF: Nothing, Your Honor. Thank you very much.

THE COURT: Thank you.

(END OF REQUESTED TRANSCRIPT OF RECORD)

CERTIFICATE

I, the undersigned, Michael R. Watts, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and the evidence introduced in the trial of the captioned case in the Court of Common Pleas for Spartanburg County, South Carolina, on the 1st day of October, 2018.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

May 23, 2019

Michael R. Watts
Circuit Court Reporter

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

WILLIAM A. MORGAN,

PLAINTIFF,

-vs-

STERLING ESTATES HOMEOWNER'S ASSOCIATION INC., AND PAUL THOMAS GARNER,

DEFENDANTS.

TRANSCRIPT OF RECORD
2016-CP-42-00727

AUGUST 16, 2019
SPARTANBURG, SOUTH CAROLINA

B E F O R E:

THE HONORABLE GRACE GILCHRIST KNIE, JUDGE.

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

JASON MICHAEL IMHOFF, ESQUIRE
ATTORNEY FOR THE PLAINTIFF

J. ALEX TIMMONS, ESQUIRE
ATTORNEY FOR DEFENDANT PAUL THOMAS GARNER

DAMON C. WLODARCZYK, ESQUIRE
ATTORNEY FOR DEFENDANT STERLING ESTATES HOMEOWNER'S ASSOCIATION, INC.

MICHAEL R. WATTS
CIRCUIT COURT REPORTER

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WITNESSES PAGE

(NO WITNESSES CALLED)

EXHIBITS

NO.	DESCRIPTION	ID.	EV.
(NO EXHIBITS MARKED)			

(PROCEEDINGS, AUGUST 16, 2019)

THE COURT: All right.

The next matter is William A. Morgan versus Sterling Estates Homeowner's Association.

Mr. Imhoff, Mr. Timmons.

And this is civil action number 16-CP-42-727.

All right. And so this is a motion to enforce settlement, is that correct?

MR. IMHOFF: Yes, Your Honor.

THE COURT: Okay. I have reviewed the file. I just refreshed on that. I believe Mr. Watts was the court reporter back in October when you all put the agreement on the record before Judge Kelly. The transcript is actually the most valuable part of the record with regard to what everybody was supposed to do and I think "work together" was a big term.

MR. IMHOFF: Yes, Your Honor.

THE COURT: Okay. As opposed to the exchange of money.

All right. So I'm happy to hear from you, sir.

MR. IMHOFF: Yes, Your Honor, if it please the court, Jason Imhoff on behalf of William or Sandy Morgan. Your Honor, he's the plaintiff in this case.

This is a surface water runoff case, fairly severe in my client's mind. It was filed in 2016.

As you have just read, it was settled the morning of trial here, as a matter of fact, in this courtroom on October 1st, 2018. There was about $17,000 in money exchanged, but, again, that was not the most important part.

The most important part was that the neighbors were to jointly hire an engineering firm and a contractor to essentially move an already existing storm water grate over about ten feet so that it would capture the water coming through Mr. Garner's yard.

The allegations were that when the developer developed Mr. Garner's lot before Mr. Garner's home was built, or before he bought it, the developer had installed these storm water grates, swales, berms, anyway, things that would capture the water. Mr. Morgan has lived there for almost two decades. So the allegation was that the defendant had moved those things, or removed them, or reduced them.

Anyway, so an engineer was to be hired jointly to come up with a plan to move this grate and put it where it would work effectively.

As you can see from the timeline that I have prepared and the e-mails supporting the timeline, my client, whose motive is to stop the water running through and undermining his yard, immediately contacts Site Design. Site Design was the name of the firm that I have used many

times and the name of the firm that was put on the record.

Site Design and Mr. Morgan asked Mr. Garner's permission to do simply investigative work; walk the property, shoot elevations on the property, look at the property. Mr. Garner for months refused access to the property.

Again, it was put on the record I note October 1st, as you see again from the timeline, to approximately two months later, after multiple, multiple requests to do just the most basic investigation, to get this Site Design plan moving, Mr. Garner decides that he no longer wants Site Design. He's found that they have been sued. He doesn't want them.

So you can see from the timeline again we asked repeatedly that if Mr. Garner does not like Site Design, to provide us with other engineers who are acceptable to him. He finally does that on January 23rd, Your Honor. We are three to four months out now.

We approve his new engineer, Summit Engineering, the next day. We provide the investigation and work that has been done by my client's engineering firm Site Design to Summit Engineering and Clay Helms.

Again, Mr. Morgan asked that he be given access to the yard, that he be given access to Summit Engineering. That is denied. Again, you can see that in the timeline

that Mr. Garner refuses to let Mr. Morgan walk onto his property to talk to the engineer they are supposed to be retaining and working with together.

When Mr. Clay Helms of Summit Engineering ultimately comes up with a plan about a month later in February, and we talked to Mr. Helms, he is told that he was not allowed to do his own investigation and come up with his own scope of repair, but was rather directed what to do by Mr. Garner. And Mr. Helms specifically said "I will not guarantee that this will fix the water problem. This is just what Mr. Garner told me to do," which is, as you can see, again from the timeline and from the settlement agreement that was put on the record, is not what the agreement was. The whole point of this agreement was to fix the water issue.

In addition to that, Mr. Garner has absolutely refused to do anything.

He has now built, and you see these in the photographs at the back of the exhibits, Your Honor, he has now built a covered porch and deck on the back of his house, presumably with the Homeowner Association's approval, and those downspouts are going into the exact same stream that is still undermining my client's property years and years later.

So not only is he not participating in the

settlement agreement and obstructing the ability to settle and resolve this case, but he's continuing to do work in his back yard, which is making the issue for my client even worse.

So I won't read the entire brief or go through all of these exhibits that I have submitted. I don't think that anything that I have said is in dispute. It is all documented here, Your Honor, so we are here asking that you enforce the agreement and that you order Mr. Garner to allow Mr. Morgan to get an engineer, to allow the engineer on the property, let the engineer determine what the fix is going to be, and then allow Mr. Morgan and the contractor to implement that fix.

And we are also asking for attorney's fees. It's now August. It's been almost a year, Your Honor.

THE COURT: Do you have an affidavit?

MR. IMHOFF: I don't have an affidavit, but I have a number, if you would like, Your Honor.

THE COURT: Okay. Can you support it by an affidavit?

MR. IMHOFF: I can support it by an affidavit.

THE COURT: How soon can you do that?

MR. IMHOFF: I can do it in the next hour after I leave.

THE COURT: Why don't I give you five days to do

that?

MR. IMHOFF: Five days.

THE COURT: Let me hear -- good morning.

MR. TIMMONS: Good morning.

THE COURT: How are you?

MR. TIMMONS: Can we at least get the number, just so we know?

THE COURT: What's the number?

MR. IMHOFF: $1,517.73. That does not include yesterday or today.

THE COURT: Okay.

MR. IMHOFF: The preparation of the brief for this morning, Your Honor.

THE COURT: Okay. Thank you.

And I have reviewed the brief. I think it was filed yesterday.

MR. IMHOFF: Yes, Your Honor.

THE COURT: Okay. All right.

Good morning.

MR. TIMMONS: Your Honor, Alex Timmons here for defendant Paul Garner.

I'm sorry I didn't get a reply brief, since it was filed at four o'clock yesterday.

THE COURT: Yes, and I will give you an opportunity to do that, if you want to, but I think that the

effort would be better spent trying to get this problem resolved.

The agreement was reached on the eve of trial. I understand that, and -- but I know your client went out of the country, I think. I read that in the --

MR. TIMMONS: That's correct, Your Honor.

THE COURT: Apparently he's back.

MR. TIMMONS: Yes.

THE COURT: And so he can get moving on this, right?

MR. TIMMONS: Well, I -- I think that the problem here, and I think what's getting lost, is in order for there to be a settlement, there has to be a meeting of the minds and I don't believe -- even if we look at the transcript, there is a complete meeting of the minds of what's supposed to occur here, and I think that's one of the issues that's getting lost.

I read what the transcript says and ultimately we agreed to move the drain five, ten feet. We did not agree that any type of grading or anything else could be done in the yard, and it's set forth in the transcript saying that we don't agree to re-grading the yard.

We have never agreed to fix the problem, as they keep saying. We agreed to move the drain and that is simply what we agreed to do. There was never an agreement. And if

they are saying there was that agreement, then there is clearly not a meeting of the minds, because all we ever stated -- and -- and if you -- even if you look at the --

THE COURT: I mean, was there any motion filed after you all told Judge Kelly this case was settled and you all put that agreement on the record? Did you file any appeal or any reconsideration?

MS. TIMMONS: Well, we have been going through this and so --

THE COURT: Yes or no, sir?

MR. TIMMONS: There was never a motion filed, but what we do have here is that we were starting to get moving on this. My client wanted a written agreement and so Mr. Wlodarcyk drafted an agreement in middle to late October and started passing it around.

There was there a discussion about Site Design at that point in time. Site Design came on -- as they said, they hired Site Design on August --

THE COURT: Y'all -- y'all -- y'all don't even -- I just assumed from the Form 4 that said the case was settled and the attached transcript that you all were going on the Form 4 and the transcript, not -- so Judge Kelly has not signed an order, other than the Form 4?

MR. TIMMONS: Clearly this was not -- this was not --

MR. IMHOFF: That's correct, Your Honor.

MS. TIMMONS: That's correct. All we had was we came in, we settled it back in -- what -- well, we came up with some agreement and terms. We came out and said "we are just going to put a settle agreement" and it was a sort -- it wasn't detailed. It was just kind of a broad "we are moving this over, this grate over," and that's all we agreed upon at that point in time.

Once we got into it, it is clear that there is no meeting of the minds, because when Mr. Helms -- they are talking about Mr. Helms coming out to the property. We told him we agreed to move the grate. And we even have an e-mail from Mr. Helms where he says that -- and this is when he was going to back out, because -- and he says "from our conversation, all I thought I needed to do was move the new catch basin to a lower area of the yard, that no berm or grading was to be done," and that was our understanding of what was to be done, just that it would be moved, no grading and no berm. And Mr. Helms even says "this is not what I have been told by the other party."

So clearly they talked to Mr. Helms, we talked to him, there is no meeting of the minds of what was supposed to happened here and I think that's what's getting lost is that ultimately for there to be a settlement, we have to have an agreement, and what we put on the record was just

a -- I mean, a broad scope of this is what's going to happen.

When we started to try to get into the details, then at that point in time we are a month and a half down the road and that is when the motion to enforce the settlement was filed.

At that point in time we were just waiting for the hearing to come up. It didn't come up the first time until February, I believe, and that's when we actually requested it. We -- it had been sitting out there, so we actually -- I think Jason requested it we get a hearing date. That was the first of February.

At that point in time things started moving along and we did have Site Design out there and they started doing some work and so we pushed it up thinking that we were making progress.

Ultimately Site Design had to back out and at that point in time the motion was put back on and I believe it was March. And I'll agree in March it got continued because of a family issue with me. And now it's the first time it's come up since then.

So ultimately when you asked if I filed a motion, I didn't know of a motion to file, ultimately, because he had already filed the motion to enforce the settlement, so at that point in time there was nothing else. I knew that

we had a disagreement and so I knew that we would have our day in court in order to come up and go argue.

So I think -- ultimately I think that's what is getting lost is that we don't -- there was never an -- after we got involved in this thing in moving down the road it was evident, and you can see from all the documents and if you look at everything that there is no meeting of the minds.

Ultimately a -- again, Mr. Wlodarcyk drafted the initial document. I put some revisions to it, passed it around, and ultimately plaintiff's counsel basically said "we can't sign it because we need X, Y. We need to have the site design done." What we wanted was the release signed. And so even in the release they say they can't sign it under those terms. We are saying we can't move forward under the terms. So, again, another show of there is no agreement here. We are not moving anything forward.

So I think that's the issue that ultimately is the problem here is that we just don't -- we never agreed. There was -- on everything that they think that was said and everything that we thought was going to be done. So I think that's the issue.

THE COURT: Okay. Let me hear from Mr. Wlodarcyk. Good morning.

MR. WLODARCZYK: Going morning, Your Honor. I represent the Sterling Estates Homeowner's

Association.

THE COURT: Yes, sir.

MR. WLODARCZYK: I will be very frank, Your Honor, this occurred so long ago, I will just defer to the transcript.

My portion of the settlement was to tender money, which I promptly did. I drafted the proposed release and circulated it and it never got signed.

The only other thing my client was supposed to do is once -- once the drain was supposed to be moved, if there was any approval by the HOA for accounting purposes or to have it done, I was going to secure that approval. And so that was the extent of my participation in this.

So I haven't been privy to the communications about Site Design, or a switch of contractors, or no access. The only things I get is basically when the hearing come up and there is an exchange from counsel whether they were going forward or not. So I really can't comment as to anything being said today, other than I was present during the settlement, and my understanding that an agreement was reached between the parties, and I don't know what else to say, judge.

THE COURT: Thank you.

Okay, Mr. Imhoff, anything in response to what counsel has said?

MR. IMHOFF: Yeah, Your Honor, that is -- that is completely disingenuous and just further obstruction of this settlement agreement.

It's very clear from the record that we actually discussed how it was going to be done during, and Mr. -- both Mr. Timmons and Mr. Garner said "I don't want my yard to be raised five feet. We don't want his yard to be re-graded entirely." That's what we were talking about. That's why we said within five feet. It's right here in the transcript, and Judge Kelly even said -- we all agree we didn't know exactly how it was going to be done. Judge Kelly even said "I'm not an engineer. That's for the engineer to determine."

There is no question that the settlement agreement required these two parties, these two neighbors, to jointly hire an engineer who was to come up with a fix for this problem. This case would have never been settled where water continues to run on my property -- on my client's property, and that's clear from the transcript. And for them now to say all we agreed to do was move a drain from one ineffective place to another ineffective place is exactly the kind of obstruction which we faced for about a year.

And if you notice the timing, Your Honor, we could not get any responses from Mr. Garner or his attorney until

we filed the motion to enforce the settlement, at which time there is an objection to Site Design. That's the first we heard anything about Site Design.

Then we said "Mr. Garner, please go pick your own engineer" so that we could work with him. He didn't pick an engineer for another several months until the motion hearing was scheduled. And two days before the motion hearing he picks three more engineers, so the motion hearing gets continued. What it is is delay and obstruction.

The transcript does not support what Mr. Timmons said. Common sense doesn't support what Mr. Timmons said. It makes no sense to settle the case and pay $10,000 to continue to have water going into Mr. Morgan's yard, and the timing of it doesn't make sense. It's just obstruction, Your Honor, and that's why we are asking for attorney's fees, and, frankly, at this point for sanctions. It's -- it's nonsensical the argument they are making and it's just more obstruction, but if they want to go back to trial at this point, and that's your only other option, we are happy to do it, especially with Mr. Garner's actions over the last year.

We would rather that you enforce the settlement, let us get an engineer, let us get it fixed. It's not that big of a case. It doesn't need another year and a half of litigation. Move the grate. If it's within the five feet

that just has to be graded down a little bit so that the water goes into this, it's well within this agreement to what we put on the record, and we would ask for our attorney's fees and sanctions at this point, Your Honor, but --

THE COURT: Okay. I --

MR. TIMMONS: Your Honor, could I just in one quick response, and I'm going to read directly from the transcript.

THE COURT: Yes, sir, I have the transcript and I have read it again.

MR. TIMMONS: And the part I want to make sure is that it states that we may be in dispute. It even says, "which Mr. Timmons tells me we may be a little bit in dispute," and that's in the transcript. So there is even a dispute on the day of, and so that being the case, that just blew it up. That dispute is what has blown up into now we -- that's what is the problem here. And so that was even on the day of. And --

THE COURT: Well, either you had an agreement or you didn't, or somebody misled Judge Kelly and he let you all leave when you could have had a trial, but he based on your statements that you all had reached an agreement and he commended you on reaching the agreement and congratulated you all on reaching an agreement.

MS. TIMMONS: And, again, that's where the -- again, that's what I'm saying. That's where the breakdown is, is that the agreement was, from our perspective, we would just move it. That was it. No re-grading, nothing like that.

THE COURT: Okay. All right.

MR. TIMMONS: And that's the problem.

THE COURT: So I will issue instructions for an order, or an order, as quickly as I can. I know that both sides are frustrated, or all three parties are frustrated and need to have this resolved.

Mr. Imhoff, though, do update your affidavit of fees for me, okay, and get that to me?

MR. IMHOFF: Yes, Your Honor.

THE COURT: All right. And --

MR. TIMMONS: And, Your Honor, we would also -- if we want to go to trial, we are ready to go to trial from that perspective. If --

THE COURT: Well--

MS. TIMMONS: Because --

THE COURT: Okay. But it just seems like that you all are using these motion hearing dates as your drop-dead date, instead of actually getting something done. The agreement was reached in 2018.

MS. TIMMONS: If you would like -- I could spend

the next 15 minutes going through the details of that, if you would like, because everything that's in the e-mail communication is not what was done.

There were also phone conversations. So just like when he says that we didn't get him those contractors until January 23rd, there was a discussion on the telephone before that saying these are who it is. We just think -- we just didn't say "here are the three contractors" at that point in time. It was a proposal from them saying this is how much it's going to cost. That's something that we never got from Site Design to begin with.

And so that's the things that the e-mails that are out there aren't the whole record of what was happening. There were conversations, telephone conversations, that aren't reflected in that.

THE COURT: Thank you.

Okay. And I hope you don't think that I'm being short or rude with you, but I do sense the frustration of everyone and I just hate that it's taken this long for you all to get in here before me on this issue, because I'm sure your clients are very frustrated as well, so I will attempt to give you my input as quickly as I can, all right? And that may require you all coming back and it won't be a few months. It will be a few weeks, because I'm the admin over civil, so I'll try. If I don't issue the order and resolve

it, then you all may need to come back before me or Judge Kelly, so I'm going to discuss with him his calendar if I don't think I can recall in an order, okay?

MR. TIMMONS: Yes.

MR. IMHOFF: Thank you, Your Honor.

THE COURT: Thank you all. Nice to see you.

(END OF REQUESTED TRANSCRIPT OF RECORD)

CERTIFICATE

I, the undersigned, Michael R. Watts, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and the evidence introduced in the trial of the captioned case, relative to appeal, in the Court of Common Pleas for Spartanburg County, South Carolina, on the 16th day of August, 2019.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

MARCH 31, 2020

Michael R. Watts

Michael R. Watts
Circuit Court Reporter

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

William A. Morgan,)
) TRANSCRIPT OF RECORD
Plaintiff,) 2016-CP-42-0727
)
-vs-)
)
Paul T. Garner, et al,)
) November 1, 2019
Defendants.) Spartanburg, South Carolina

B E F O R E:

HONORABLE GRACE GILCHRIST KNIE, JUDGE

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

JASON MICHAEL IMHOFF, ESQUIRE
Attorney for the Plaintiff

J. ALEX TIMMONS, ESQUIRE
Attorney for the Defendant

Linda D. Moffitt
Circuit Court Reporter

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No sworn testimony; no exhibits entered into evidence.

THE COURT: The next matter is William Morgan vs. Sterling Estates Homeowners Association, et al. Mr. Timmons and Mr. Imhoff.

MR. IMHOFF: Yes, Your Honor.

THE COURT: Okay. Y'all get settled.

(Pause.)

THE COURT: Okay. I've got this pulled up.

This is defendant Garner's motion for reconsideration. It's my understanding that, sir, Mr. Timmons, you don't represent Sterling Estates Homeowners Association. Is that correct?

MR. TIMMONS: That's correct. Mr. Wlodarcyk represents them. He sent us an email this morning saying that he was not going to be here --

THE COURT: Yes, sir.

MR. TIMMONS: -- and we could just defer to it.

THE COURT: I just wanted to make sure that everybody understood that he was not going to be here and that your motion is with regard to Mr. Garner only.

MR. TIMMONS: That's correct.

THE COURT: Okay. And Mr. Imhoff is here for Mr. Morgan.

And I'll just ahead and tell you all that I do draft a lot of my own orders and that I dated the order on this case September the 7th, which was a Saturday, and I

recorded it on Friday afternoon, right late in the afternoon, before I left on September the 6th, I think. And I am sorry for that but I don't -- it doesn't affect the time issue for the filing of the motion for reconsideration.

Okay. But when I saw the motion I realized it, and I guess I was just thinking, anyway, but I did that order myself and I dated it that day.

So okay. So but the motion was filed timely within the ten days, and so we don't have an issue either way.

Okay. All right. And so I'm happy to hear from you, sir, and then I'll hear from Mr. Imhoff. I'll let you reply to anything that you feel you need to. Okay.

MR. TIMMONS: Thank you, Your Honor. May it please.

Alex Timmons here for defendant Paul Garner in the matter. We're here today for the -- a motion to reconsider from an order that you just described.

We -- we received it on September 6th of 2019. I'm not going to go back through everything. We've been here a couple of times, and you have multiple memos and motions on this matter. So I'm not going to go back through all of the facts.

But we're here today because the Court in this case ordered on September 6th that as to whether there was an agreement or not, it was ordered that there was a meeting

of the minds and that the plaintiff attempted to honor the terms of the agreement.

And then the Court further ordered that the defendant should allow an engineer of the plaintiff's choosing to access the property and do an investigation, inspection, present proposed scheduled repair.

The Court also ordered that the defendant was to comply with the scope of repair unilaterally by the engineer chosen by the plaintiff and then the -- and then the defendant was to give a contractor access to the property to implement the scope.

In our motion to reconsider we -- we put two points on there. We believe that in this case the Court failed to consider the totality of the evidence.

As was previously argued and still -- Mr. Garner still holds this position -- that he vehemently denies doing anything wrong in this matter. And we hold that there wasn't a meeting of the minds on some of the essential elements, the essential element meaning the scope of the repair.

That was evident from the actual agreement that was discussed on October 1st of 2018 when even plaintiff's counsel said that I figured there was going to be a dispute here.

We do agree that there were some things that were on

the record that weren't their meeting of the minds, that we were going to work together, try to select the engineers and contractors to do the work. But there was never an agreement on -- as to the scope of the repair.

The agreement and the intent of our -- our side in this agreement, that we would move this -- this storm-water drain to make it effective, because, and when I say to make it effective, I don't mean that we're going to stop all of the water, but where it's currently setting it doesn't catch any water and has never caught any water.

And so in order to move it over to where it's going to be in the water and in the path of the water, we agreed to make it effective that way. And that was the agreement that we agreed to move it.

There's never been any agreement from our side, from our position that the making it more effective meant that coming in and changing Mr. Garner's yard other than just moving this -- this grate.

I want to address a couple of things. I believe plaintiff's counsel filed a memo in opposition late yesterday. He stated in that memo in opposition that both parties agreed to allow the engineers to propose a scope and that the parties would allow in that scope.

I believe that's not taken into the right context and correctly from the statement that was given on the record

back in October 1st.

In actuality, plaintiff's counsel said I suggest that this is what to be done. Nobody ever agreed to it. He just suggested it out there.

There was -- this was right after plaintiff's counsel told the Court that we believe that there's going to be a dispute over how it's to be done or the scope of the work. And that is still what is disputed, what is to be done or what the scope of the work is.

Plaintiff's counsel also stated in his memo that both parties and Judge Kelly envisioned using the engineers to report the conduct -- the report and to conduct the repair.

I believe that's not a correct statement. It was never the intent of Mr. Garner to agree to using an engineer -- the engineer report to basically conduct the repair. The agreement was to simply move the drain. That has always been the intent of Mr. Garner.

I -- I -- just to use an example is if the engineer came in and did the scope of repair, which involved grading Mr. Garner's property, then that would -- that scope of repair would have been rejected because, again, as was put on the record, we did not want any type of grading done on this property, Mr. Garner's property. We wanted it to essentially stay the same way other than picking up the grate and moving it to a new location.

And so another position that they stated in the memo that was received late yesterday was that they -- at the end of the original statement in October 1st we stated at the very end of it that this matter would be over once the drain was moved, and plaintiff's counsel has taken out of context that outside of some catastrophic, coming in and doing something crazy in the yard, and that he has taken it to say that an engineer coming in and doing something crazy.

In this case that's clearly taken out of context. That was -- in the -- in the agreement that was put on the -- the record that was having to do with once the work is done it is forever done and unless somebody comes in after the fact and does something catastrophic or crazy to change what has been done, then this would be forever ended. So I believe that he has taken that out of context.

And so looking at all of this in a totality of the evidence the -- the case law clearly states that the intentions of the parties is to be viewed. And how can we see the intentions of the parties? The circumstances or subsequent acts. And that's from case law that was mentioned in the memo.

Looking at the circumstances in this case, Mr. Garner has, again, always said I've done nothing wrong, I'm here to try to work something out with the plaintiff but I'm not

going to allow them to just come in and do whatever because I never done anything wrong and I deny everything that they're saying in this. So it was never a problem that he created. It was always a problem that existed. And so looking at that, the circumstances there, why would he allow somebody to come in and do whatever on his property?

Looking at the subsequent acts in this case, subsequent to October 1st of 2018, moving forward, the subsequent acts clearly showed that there was never a meeting of the minds of the essential element of this scope of the repair.

It was evidenced through, I believe, documents that have been previously submitted through memos talking to an engineer that came out -- Mr. Helms.

Mr. Garner said this is what I believe should be done, and then Mr. Helms talked to plaintiff's side and, ultimately, plaintiffs told him, no, this is what should be done. And Mr. Helms backed out because he stated clearly you guys do not agree as to what's to be done. We believe that's an essential element of this -- this agreement or to what's to be done. I mean, and I believe it's almost probably the most material element.

You can choose a contractor, you can choose an engineer, but the actual work and what is to be done is what's in disagreement here.

And so looking at the intentions of the parties, looking at and using the circumstances and subsequent acts, it clearly shows that there is not an agreement on all of the essential terms and mainly even the essential term of what is to be done.

The case law is clear that if there's not been a meeting of the minds to form a complete settlement agreement on all essential terms, then the matter should be removed and restored back to the docket for trial.

Secondly, the second point in our motion to reconsider was that we believe that the Court's abused its discretion in this matter from the order on September 6th of 2019.

The original motion was a motion to enforce the settlement agreement. The Court's role in enforcing the settlement agreement is to find if it can the terms of the complete settlement agreement and enforce them. And if there's not a complete settlement agreement, then the Court should rule that way and then remove it back to the original trial docket.

The case law further goes on to state that it is improper for the Court to be -- act as a final arbiter in order -- and to order parties to do something that were not -- was not included in the -- in a settlement agreement.

Based on the order it is at least our position that

now the Court's moved to the position of a final arbiter and has ordered things that were outside the original settlement agreement.

The Court ordered the defendant to allow the plaintiff to choose a [sic] engineer to investigate, inspect and to come with a scope. The original agreement that was put on was that the parties were to work together to come up and jointly hire the people who were to come on, whether it was a contractor, engineer or whoever, because the work is being done on Mr. Garner's property. It's not on Mr. Morgan's property. It is on Mr. Garner's property.

So it was -- they were jointly to hire somebody and the order said they both had some control. And that was in the original agreement.

The Court also ordered Mr. Garner to comply with whatever the scope was that was given by the engineer that was to be chosen by the plaintiff.

Again, that's not working jointly together. Essentially, Mr. Garner now has to agree to whatever Mr. Morgan tells the engineer to come up with, and this is what's to be done. Now he has to just agree to that scope and can't do anything about it.

And, lastly, the Court ordered that Mr. Garner would allow the contractor to come into his property. Again, contractor chosen by the plaintiff, and implement the scope

of repair that he doesn't have a say in.

And, ultimately, this would be directed by the plaintiff. The plaintiff's going to hire the contractor and the engineer and tell them what has to be done and then now Mr. Garner has to comply with that per the order.

Nothing about the order involves working together. It's allowing the plaintiff to choose the -- the people who are going to do the work and ultimately choose the scope of the work. And this is in a case where we have held from day one that almost this is a frivolous lawsuit because we didn't do anything wrong. I mean, never did anything wrong.

The order is essentially taking any, any control whatsoever that Mr. Garner was to have and now it's placed it in the hands of the plaintiff to allow him to do whatever work needs to be done on Mr. Garner's property, not the plaintiff's property but Mr. Garner's property.

And so basically what we have now is that Mr. Garner has to sit back and let the person who he's always said is bringing this lawsuit that has no basis to now come onto his property and control what's to be done. This would be something that would have never been agreed to and was never agreed to.

So it's our position that in this case the order has taken the next step and the Court has acted as an arbiter.

This is not just simply try to determine if there was a settlement agreement and enforce the terms of the complete settlement agreement.

Therefore, Your Honor, we would just ask that the Court would reconsider the two points that, considering the basis of the totality of the evidence, that it proves that there wasn't a meeting of the minds and there was no complete settlement agreement on all essential terms and the main essential term of the scope of the repair. And because there was not a meeting of the mind on all of the essential terms, then the matter should be placed back on the trial docket.

In the alternative if there -- the Court says that there was a settlement agreement, then we would ask to reconsider and go back to where it clearly says that the parties shall work together and that both should have some control over what's going to happen in this matter. And, again, it's our -- our belief that in the order that is now setting out there that all control has been taken away from the defendant in this matter, and so we would just ask the Court to -- to reconsider the order based on those points.

THE COURT: Yes, sir. Thank you.

Mr. Imhoff.

MR. IMHOFF: Yes, Your Honor. Thank you.

Your Honor, I would first say that we fully agree with

it, with your order. Mr. Garner has had over a year to comply with the settlement agreement that he sat here and agreed to. And as you saw from our initial brief where we --

THE COURT: Has it been over a year or was it almost a year? November the 18th, I think was -- maybe I'm wrong. Maybe I'm wrong about the date. Maybe it was October the --

MR. IMHOFF: It was in September or early October.

MR. TIMMONS: We were --

THE COURT: That y'all were on the trial docket and you announced to the Court that you reached an agreement.

MR. IMHOFF: October 1st.

MR. TIMMONS: October 1st, Your Honor.

THE COURT: So it has been over a year. I'm sorry.

MR. IMHOFF: It's been over a year, and Mr. Garner has had an opportunity to comply with the settlement agreement that he sat here and agreed to, that his attorney agreed to, that we all agreed to.

And there are three parts of that agreement which are a meeting of the minds, is clear that he was supposed to work with Mr. Morgan to find an engineer. He never did that. He never worked with Mr. Morgan to find an engineer. We proposed engineers. He rejected them. We asked him for his own engineer. It took him until January, from

October 1st until January, to finally get that engineer.

We immediately approved that engineer. So that's number one. There's no question there was a meeting of the minds that they were to work together to get an engineer, and Mr. Garner didn't do that.

The second thing is we were allowed -- they were to allow the engineer -- this is in the transcript -- allow the engineer to make the repair for modification as effective as possible.

Mr. Garner didn't do that. Mr. Garner substituted his own opinion -- he's not a licensed engineer -- for that of Clay Hounds or any other engineer. So that was another meeting of the minds, Your Honor. They both agreed that the engineer would propose a scope. It was said by -- by myself; it was said by Mr. Timmons; it was said by Mr. Garner; and it was said by Judge Kelly, Your Honor.

And the third thing was both parties and Judge Kelly envisioned using engineer's report to conduct the repair. Judge Kelly said I'm not an engineer and we'll have to rely on the engineer to make that decision of how it's going to be done. There was no objection to that by -- by defendant or defendant's counsel.

The only things they said during that settlement hearing is Mr. Garner said I don't want them to regrade my whole yard, I don't want them to raise it 5 feet.

Mr. Timmons said it can't be anything catastrophic or anything crazy. Those are the only objections they had to it. Otherwise, it was going to be the engineer who was going to prepare a scope or narrative made it effective.

Those are three things, three basic things, that make up this settlement agreement and it's -- it's sort of amazing to us that a year later we could have a settlement agreement that's put on the record on October 1st of 2018, a settlement agreement, and now they're saying there was no settlement agreement. That's just sort of amazing to us that that argument could be made.

But, Your Honor, we think that your order was correct, but we are willing to ask the Court to revise that order to help Mr. Garner a little bit if the Court would order that within 30 days the parties jointly hire an engineer and within 60 days that engineer is allowed to go out and actually do sight -- a sight visit, shoot elevations and come up with his own proposed scope of repair and that that scope of repair be implemented as quickly as possible.

We would be fine with those revisions or amendments to the order, Your Honor, but we would also ask that you put in there that Mr. Garner has to comply with those, with those very specific items, and unless the engineer's scope of repair is crazy, catastrophic, raises his yard by 5 feet or regrades his entire yard that that scope of repair be

implemented and we end this -- this case.

But going along with that, we would like attorney's fees and sanctions for the last year. This is clearly a meeting of the minds that Mr. Garner, as I put -- put forth in my first brief, has tried to stop and stall for over a year.

Mr. Morgan did not want to pay me for another year to be standing here in front of you to point out the obvious, which is that the settlement agreement was agreed to and the terms of the settlement agreement were clear on October 1st of 2018 and he has done everything to stop this from happening.

It's not a hard case, it's not a hard repair. The engineer just needs to move the drain, maybe as Mr. Timmons said, grade around the grate a little bit so that water will go into the grate. You certainly don't want to have it a foot above the surrounding property. And then this case will be over, Your Honor. But that's our point.

There's no question that it was a meeting of the mind on three basic things -- work together to get the engineer, let the engineer do his scope of repair and then implement that scope of repair. Thank you, Your Honor.

THE COURT: Okay. Mr. Timmons.

MR. TIMMONS: First of all, Your Honor, I want to address one issue.

Yes. It's been a year, but as of January 2019 we all saw that this was breaking down and it was going nowhere. And we were all waiting for the motion to enforce the settlement to originally come up.

I would also put as an argument as to this memo yesterday that we continued that motion on purpose. One time we had agreed to the engineer and we were waiting for the engineer to come out and do his work. That -- and it was moved that time, one time.

The other time, yes, it was me because I had sick kids and I had no choice because there was nobody else to watch. And he agreed to it and --

THE COURT: Yes, sir. And, again, I'm more focused on his -- there was a proposal mentioned in his argument of resolving this to agree jointly on the expert, on the engineer, and then 60 days to implement.

MR. TIMMONS: Your Honor, I would agree to the point of selecting an engineer.

THE COURT: Jointly.

MR. TIMMONS: Jointly.

The implementation is where we have an issue because this was always a straight from the -- the original statement that was given. And he's even said the only thing I would add, which might -- which Mr. Timmons tells me may be a little bit of a dispute, is I don't know how

it's going to be done and what is required.

So at that point in time we even discussed that it was going to be in dispute, because they had an idea what to be done and we had an idea of what to be done. And that was put on the original statement in court that we already knew that there may be a dispute there. And that's what's come about here, is that we have a dispute.

And so I think as to the proposal that he put up for them to come out and give us a scope of repair, I think the parties are going to have to look at this and go they have one idea of what's to be done and we have another idea.

We can see what the -- the engineer comes up with, hopefully trying to implement both of those as in Mr. Garner not wanting his yard to be regraded and the plaintiff's side wanting the water to somehow be completely stopped. I think there is -- if the engineer can work out something in that perimeter --

THE COURT: Well, yes, sir. And I know that you're thinking about this down the road and/but I think that you may have to agree to this person first, and then your client and Mr. Imhoff's client are going to have to be involved, because what you're talking about is something that is subjective as opposed to objective about what he might agree to be done to his property versus what is going to actually work to solve the problem.

MR. TIMMONS: And where we're at here, Your Honor, is that we don't disagree to move the grate. It will be more effective if it's moved.

We're not here -- ultimately, we didn't cause a problem, and so in order to fix his problem we're not willing to do whatever to fix his problem. That's where the issue is, is that granted the problem is something that we never created. And so in order to do whatever to fix the problem, is something that we never agreed. That's -- I think that's the ultimate, the issue that we have.

And if we'd have tried this case we would have had witnesses that came in to say we didn't cause the problem, but we never tried the case.

And so I think I agree to the selecting within 30 days and having an engineer coming out within 60 days to give a scope of repair. But as to complying exactly with what he says has to be done is where we may have an issue, because if he has anything that says, hey, we need to come in and start grading the property other than where the hole is dug and we know that there has to be some right around there, that is where we may have an issue.

THE COURT: Yes, sir. Okay. And I appreciate your saying that you anticipate there being problems, but I think that, again, you're going to have to at least identify this person or y'all agree. Have y'all agreed

before on --

MR. TIMMONS: We have agreed at one point in time.

THE COURT: I thought that there was someone from Greenville that you all --

MR. TIMMONS: There was -- they proposed Site Design. Mr. Garner did not like the Site Design, and it's because of all of the legal -- they've been sued, or sued a lot, and so he didn't want somebody. But then we agreed on a separate one later on. But that was one where we told them to go do this and then they told him and he backed out and say, hey, you guys -- you guys still have issues.

THE COURT: Okay. All right. Mr. Imhoff.

MR. IMHOFF: Your Honor, it was -- it was January 23rd when he eventually -- when he eventually proposed settlement. So from October 1st all the way to January 23rd.

Your Honor, I think what you're hearing is a flat rejection, we're not going to work with you no matter what, the scope of repair is going to be we're not going to implement it.

Your Honor, I think you can leave your order just the way it is. I think you order attorney's fees and sanctions -- Mr. Garner -- and we go from there.

They are clearly not going to comply with the settlement agreement from what Mr. Timmons said. And what

Mr. Timmons said during that hearing is we understand some grading will need to be done. Now he's saying something completely different. He -- he literally, he said we understand some grading will need to be done.

I -- I don't know what else to do. I understand he thinks it's a frivolous lawsuit and he had witnesses and we had witnesses. My client does not think it's frivolous at all.

Mr. Garner clearly removed the -- the storm-water runoff, the devices that were put in by the developer. There's no question that he did that.

So at this point it doesn't look like there's going to be any agreement by -- by defense counsel, and so we would just say deny his motion and leave the order as it is.

And we, again, would ask for attorney's fees and sanctions, Your Honor. This is -- this is clearly he's trying to prevent anything from happening on his property and will not agree to anything.

THE COURT: All right. Yes, sir. Very briefly. We've got one more after you. So yes, sir.

MR. TIMMONS: I disagree. I mean, we will -- I sent him a -- and he can -- I sent him a proposed agreement and release this morning, which my client would be willing to do, and I'll be willing to pass it up so the Court can see it.

MR. IMHOFF: I haven't seen it, Your Honor.

MR. TIMMONS: It was emailed to him this morning, and it's basically the same, almost along the same lines as what was proposed previously.

THE COURT: Okay. Well, why -- why don't you all do this then?

Mr. Imhoff, I'm happy for you to take time and review this with your client. And why don't you let Mr. Timmons know if you can agree to this, and let me know. But I don't want you all to -- I mean, this is how many pages? Eight pages. I'm happy for you to review it with your client. Okay. And I understand that you may not have seen it yet today. That's fine, because y'all were probably meeting and preparing for this before we started at 9:30.

So if it's something that you all believe you can work with let -- let Mr. Timmons know and let me know, because I'm going to start drafting an order on this pretty quickly.

MR. IMHOFF: Your Honor, we'll talk about it and work on it right now. We'll have some kind of response.

THE COURT: It is nice to see you all.

Sir, thank you for being here, and I wish you the best in the future.

END OF REQUESTED TRANSCRIPT OF RECORD

CERTIFICATE

I, the undersigned Linda D. Moffitt, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of all the proceedings had and evidence introduced in the trial of the captioned cause, relative to appeal, in the Common Pleas Court for Spartanburg County, South Carolina, on the 1st day of November 2019.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

January 8, 2020

s/Linda D. Moffitt

Linda D. Moffitt
Circuit Court Reporter

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF SPARTANBURG	)	CA#: 2016-CP-42-0727
	)	
William A. Morgan,	)	
	)	
Plaintiff,	)	
	)	**BRIEF IN SUPPORT OF PLAINTIFF'S**
v.	)	**MOTION TO ENFORCE SETTLEMENT**
	)	
Sterling Estates Homeowner's Association, Inc. and Paul Thomas Garner,	)	
	)	
Defendants.	)	
	)	

This matter is before the Court on motion of Plaintiff to enforce the terms of the settlement agreed put on the record on October 1, 2018. Plaintiff William A. Morgan (hereinafter "Plaintiff") submits this memorandum to the Court in support of his motion to enforce the settlement agreement.

FACTS

This case arises out of significant surface water erosion issues caused by Defendant Garner's removal of storm water direction and capturing devices installed by the developer which caused water to channel directly onto Plaintiff's property in a single stream. The case was set for trial on October 1, 2018 and was settled, with the help of the Hon. R. Keith Kelly, on that morning. (Exhibit A, Order). The terms of the settlement were put on the record.

The terms of the settlement were that Thomas Garner was to pay $11,000.00 and Defendant Sterling Estates Homeowners Association was to pay $6,000.00. More importantly the parties agreed to jointly retain an engineer and contractor to install or move a storm water

drainage drain on Mr. Garner's property to make it more effective. Specifically, the agreement on the record was as follows:

> Mr. Imhoff:
> ... Mr. Garner and Mr. Morgan have to work together, because they have agreed to -- ... They are going to move [a 3x3 drain covered by a 4x4 grate]... approximately 10 feet over so that it collects the water. Right now it's ineffective where it is. It's going to move just right down the pipe, so it should be a fairly easy thing to do, but we want that on the record. I think what we have agreed to do is set -- is set aside about $5,000 just as a general estimate and Mr. Garner and Mr. Morgan are going to hire the contractor who is going to do that work so that they both have some degree of control over it.
>
> ...
>
> ... there is a place called Site Design with Andy Sherard in Greenville that's not only engineers, but they also do the work.
>
> ...
>
> ... I don't know how that's going to be done, what it requires, how high it's going to be, how low it's going to be, but it needs a little bit of sloping around it to make more -- to make it more effective or not, and what I would suggest is that Mr. Morgan and Mr. Garner rely on the engineer or contractor that does it to make it as effective as possible...
>
> Mr. Timmons, attorney for Mr. Garner, put on the record that:
> "Mr. Garner does not want them to come in and do his yard.... We understand they may have to drop down a little bit in order for the water to go in it, but he does not want -- just so long as that can be part of it, is that they are not going to re-grade his whole yard. We understand there may be some right around the grate that has to be done, but we don't -- right now, it's -- as you can see, it's relatively flat in the area where it's going have to be moved, and so we would like it to stay as flat as possible right there.
>
> ...
>
> The Hon. R Keith Kelly stated, "I think only engineering can tell you that. I'm not an engineer."

Exhibit B, Trial Transcript.

Therefore, based upon terms of the agreement, Mr. Garner and Mr. Morgan were to jointly hire a contractor and engineer to determine the scope and manner in which the work was to be performed so that it effectively controlled most, if not all of the water.

Thereafter, Mr. Morgan immediately attempted to retain Site Design to begin the process of engineering and repair. The following timeline, with exhibits, highlights Mr. Garner's refusal

to participate in that process, refusal to let Mr. Morgan or any other engineers on his property, and delayed and obstructed the process:

- October 4, 2019: Stephanie Gates of Site Design requests information. Forwarded to Alex Timmons. (Exhibit C)
- October 23, 2018: Request for access to Mr. Garner property. (Exhibit D)
- October 24, 2018: Request for access on October 25, 2018. (Exhibit E)
- October 24, 2018: Mr. Garner is out of the country and refused permission for anyone to go on his property without him. (Exhibit E)
- October 24, 2018: Requested dates that work for Mr. Garner. Confirming its investigative. No decisions to be made. (Exhibit E)
- October 30, 2018: Email Mr. Timmons re: necessity of Site Design to look over Mr. Garner's fence. Explanation of investigative work. (Exhibit F)
- November 14, 2018: Email from Clay Jones of Site Design asking for a site visit to survey the property so that the civil engineers can design the new layout. Request is made to Alex Timmons for access to the property. (Exhibit G)
- November 16, 2018: Email to Mr. Timmons as well as a voicemail and contact with the legal assistant re: waiting for dates or approval for Mr. Garner to simply shoot elevations in his yard. No decisions are to be made just information gathering. Mr. Garner is welcome to speak to Mr. Jones or Site Design. (Exhibit G)
- November 19, 2018: Request to let Site Design in Mr. Garner's yard to shoot elevations. (Exhibit G)
- November 21, 2018: Plaintiff filed Motion to Enforce Settlement. (Exhibit H)
- December 6, 2018: Mr. Garner refuses to work with Site Design. (Exhibit I)
- December 14, 2018: Requesting Mr. Garner identify an engineer of his own choosing. (Exhibit I)
- January 4, 2019: Request for Mr. Garner to get engineering proposal. (Exhibit J)
- January 23, 2019: Mr. Garner suggests three engineering groups. (Exhibit K)
- January 24, 2019: Plaintiff approved Summit Engineering and sends Summit Engineering investigative work done by Plaintiff's counsel and Site Design. (Exhibit L)

- January 30, 2019: Mr. Garner promises to contact Summit Engineering and get them started on the work. (Exhibit M)
- February 1, 2019: Motion to enforce the settlement hearing continued based on Mr. Garner's promise.
- February 1, 2019: Summit Engineering goes to Mr. Garner's house to start work. Mr. Garner refuses Plaintiff Sandy Morgan access to the property or Summit Engineering. (Exhibit N)
- February 26, 2019: Clay Helms informs Plaintiff's counsel that he was not allowed to prepare a scope of repair but rather directed to prepare Mr. Garner's scope of repair. Mr. Helms and Summit Engineering quit the project. (Exhibit O)
- March 20, 2019: Hearing on motion to enforce settlement set for March 20, 2019 continued due to Mr. Timmins family issues.

As can be seen from above, the settlement agreement entered into on the record prior to trial on October 1, 2018 was delayed and blocked by the efforts of Mr. Garner. Mr. Garner refused to provide access to any engineers even for fact-finding for approximately four months. After refusing to allow the engineers onto his property to begin fact-finding and investigation Mr. Garner determined he would not allow Site Design to serve as the engineering company for the project. Thereafter, he refused to produce a list of acceptable engineers for the project until January 23, 2019. Immediately thereafter, Plaintiff contacted Clay Helms of Summit Engineering on January 24, 2019, approved the use of Clay Helms with Summit Engineering and forwarded investigation that had been done by Plaintiff's counsel and Site Design to Mr. Helms and Summit Engineering. Thereafter, Mr. Garner refused to allow Plaintiff onto his property to discuss the repair with Summit Engineering. In the meantime, the motion to enforce the settlement had been scheduled but continued as each time it came up Mr. Garner would move forward with some work.

On February 26, 2019 it became clear that without Plaintiff's involvement in the project Clay Helms and Summit Engineering were told specifically what to do by Mr. Garner. Mr.

Helms stated that he did not prepare a scope of work to fix the issue rather simply followed Mr. Garner's direction of what to do. Without Plaintiff's participation, Mr. Helms would not certify that Mr. Garner's directions would fix the issue and, in fact, quit working for Mr. Garner on February 26, 2019. Since that time, Mr. Garner has not identified another engineer or taken any other step to comply with the settlement agreement. In fact, instead of complying with the settlement agreement and fixing the water issue which is continuing to significantly damage Plaintiff's property, Mr. Garner built an attached sunroom with approval of the homeowners association which puts more water into Plaintiff's property. (Exhibit P, Photographs). The water issue remains unresolved and no attempts to fix it have been made.

Based upon the above and the obvious delay and obstruction by Mr. Garner, Plaintiff requests the following:

1. Defendant Garner be ordered to allow an engineer of Plaintiff's choosing, Site Design, access to the property to do investigation, inspection, and present a proposed scope of repair;

2. Defendant Garner be ordered to comply with the scope of repair drafted by Site Design and give any contractor access to his property to implement the scope of repair;

3. Defendant Garner be ordered to pay attorney's fees, costs, and sanctions for intentionally and willfully obstructing implementation of the settlement agreement; and

4. That the terms of the settlement agreement be enforced.

CONCLUSION

Plaintiff requests that the Court grant its motion to enforce settlement and order Mr. Garner to allow access to his property both for preparation of scope of repair and implementation

of the scope of repair. Plaintiff further requests attorney's fees, costs, and sanctions against Mr. Garner for his willful obstruction of the settlement agreement.

s/ Jason M. Imhoff
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Attorney for Plaintiff William A. Morgan

August 15, 2019

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2016CP4200727

William A Morgan
PLAINTIFF(S)

Sterling Estates Homeowners Association Inc et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

☐ JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☑ DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

☐ ACTION DISMISSED (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ ACTION STRICKEN (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

☐ STAYED DUE TO BANKRUPTCY

☐ DISPOSITION OF APPEAL TO THE CIRCUIT COURT *(CHECK APPLICABLE BOX)*: ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

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

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☑ Statement of Judgment by the Court:

CASE SETTLED

ORDER INFORMATION

This order ☑ ends ☐ does not end the case. ☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 10/02/2018

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

Spartanburg Common Pleas

Case Caption:	William A Morgan VS Sterling Estates Homeowners Association Inc , defendant, et al
Case Number:	2016CP4200727
Type:	Order/Electronic Form 4

It is so Ordered.

s/ R. Keith Kelly - 2165

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

WILLIAM MORGAN,)
)
PLAINTIFF,) TRANSCRIPT OF RECORD
) 2016-CP-42-00727
-vs-)
) OCTOBER 1, 2018
STERLING ESTATES) SPARTANBURG, SOUTH CAROLINA
HOMEOWNERS ASSOCIATION,)
INC., PAUL THOMAS)
GARNER,)
)
DEFENDANTS.)

B E F O R E:

THE HONORABLE R. KEITH KELLY, JUDGE.

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

JASON IMHOFF, ESQUIRE
ATTORNEY FOR THE PLAINTIFF

J. ALEX TIMMONS, ESQUIRE
ATTORNEY FOR DEFENDANT STERLING ESTATES
HOMEOWNERS ASSOCIATION, INC.

DAMON WLODARCZYK, ESQUIRE
ATTORNEY FOR DEFENDANT PAUL THOMAS GARNER

MICHAEL R. WATTS
CIRCUIT COURT REPORTER

INDEX

WITNESSES	PAGE
(NO WITNESSES CALLED)	

EXHIBITS

NO.	DESCRIPTION	ID.	EV.
(NO EXHIBITS MARKED)			

(PROCEEDINGS, OCTOBER 1, 2018).

THE COURT: You have something that you need to put on the record?

MR. IMHOFF: We do, Your Honor.

If it please the court, Your Honor, Jason Imhoff on behalf of Sandy Morgan, plaintiff.

As you are aware, we have settled this case, Your Honor.

The terms of the settlement monetarily aren't necessarily that important, although it's 11,000 from Thomas Garner and 6,000 from the Sterling Estates Homeowners Association.

What is more important and what we needed to put on the record, Your Honor, is that Mr. Garner and Mr. Morgan have to work together, because they've agreed to -- and I could show you a photograph, if you would like, but essentially there is an ineffective --

Mr. Garner, two-foot drain or three --

MR. GARNER: The drain itself is 3 x 3 covered by a 4 X 4 grate.

MR. IMHOFF: Okay. So they are going to move that approximately ten feet over so that it collects the water. Right now it's ineffective where it is. It's going to move just right down the pipe, so it should be a fairly easy thing to do, but we want that on the record.

I think what we have agreed to do is set -- is set aside about $5,000 just as a general estimate and Mr. Garner and Mr. Morgan are going to hire the contractor who is going to do that work so that they both have some degree of control over it. Obviously it's Mr. Garner's yard, so he wants some control over it and also obviously some culpability if things go wrong.

I know, and Mr. Timmons may know, there is a place called Site Design with Andy Sherard in Greenville that's not only engineers, but they also do the work. I don't know how expensive they are, but that's something that I will throw out to these gentlemen, depending on the price of that.

But, anyway, that's the idea.

The only thing that I would add, which might -- which Mr. Timmons tells me may be in a little bit of dispute is I don't know how that's going to be done, what it requires, how high it's going to be, how low it's going to be, whether it needs a little bit of sloping around it to make more -- to make it more effective or not, and what I would suggest is that Mr. Morgan and Mr. Garner rely on the engineer or the contractor that does it to make it as effective as possible, Your Honor.

MR. TIMMONS: In some ways that would be the one part that Mr. Garner does not want them to come in and do

his yard. As you can see, it's sort of flat right there. We understand that they may have to drop it down a little bit in order for the water to go in it, but he does not want -- so as long as that can be part of it, is that they are not going to re-grade his whole yard.

We understand there may be some right around the grate that has to be done, but we don't -- right now, it's -- as you can see, it's relatively flat in the area where it's going to have to be moved, and so we would like it to stay as flat as possible right there.

THE COURT: Sure.

MR. IMHOFF: Yeah, I would say within five feet, or less.

MR. GARNER: I don't want my yard elevated five feet, no.

MR. IMHOFF: No, no, no. No, we are not going to elevate the yard. No, I'm talking about just sloping the yard into the drain when it's moved, within --

THE COURT: I think only engineering can tell you that. I'm not an engineer.

MR. IMHOFF: But it's not our intention to re-grade his yard at all. As a matter of fact, we want to do it as cheaply and as quickly as possible.

THE COURT: Sure.

MR. IMHOFF: One last thing, Your Honor. The

Homeowners Association I think has agreed to cooperate in any way they can. They may need to get with county. I'm not sure, and get some permits or do some approvals or something like that.

THE COURT: Okay.

MR. WLODARCZYK: Very briefly.

I believe whatever manner is possible.

MR. TIMMONS: One last thing. I would say once this grate drain is moved, outside of some catastrophic coming in and doing something crazy in the yard, that this forever ends any type of water issue, because we have all agreed to move it to this point. So if there is some water that bypasses it somehow, outside of some type of -- outside of normal usage of the yard, that this is forever and we can't come back here for any type of other suit.

MR. IMHOFF: Yeah, we would agree to that. It would have to -- Mr. Garner or someone else would have to do something to make that drain ineffective again, which is --

THE COURT: I think the -- I think the case law calls it a common end.

MR. IMHOFF: That's right.

MR. TIMMONS: Yes.

THE COURT: All right. Thank you, gentlemen, so very much. You have worked hard on this. I know, because I was back there listening to you and I appreciate all of you.

I really do.

And gentlemen, congratulations on settling this case.

All right. Anything further?

MR. IMHOFF: Nothing, Your Honor. Thank you very much.

THE COURT: Thank you.

(END OF REQUESTED TRANSCRIPT OF RECORD)

CERTIFICATE

I, the undersigned, Michael R. Watts, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and the evidence introduced in the trial of the captioned case in the Court of Common Pleas for Spartanburg County, South Carolina, on the 1st day of October, 2018.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

May 23, 2019

Michael R. Watts
Circuit Court Reporter

Stephanie Echols

Subject: FW: FW:

From: Jason Imhoff
Sent: Thursday, October 04, 2018 9:34 AM
To: 'Stephanie Gates'
Cc: Amanda Steward (asteward@wardfirm.com); Alex Timmons; damonw@rplfirm.com; 'sandman719@att.net'
Subject: RE: FW:

The tax map # is 2-44-00-752-00. Thomas Garner and Amy Baker. 736 Sterling Dr.

The proposal will be made to Thomas Garner and Sandy Morgan (the downstream neighbor) at 730 Sterling Dr.

Also, the Sterling Estates Homeowners association may want/need a copy of this because it will effect several downstream homeowners and they may want to weigh in and help resolve this for the entire area.

Finally, we retrieved the incorrect storm sewer drainage plan. I am sending my runner back to get the correct plat and will get it to you as soon as possible.

Thank you for your help

Jason Michael Imhoff
The Ward Law Firm, P.A.
233 S. Pine Street
P.O. Box 5663
Spartanburg, SC 29304

(864) 582-3075

jimhoff@wardfirm.com

From: Stephanie Gates [mailto:sgates@sitedesign-inc.com]
Sent: Thursday, October 04, 2018 9:18 AM
To: Jason Imhoff
Subject: Re: FW:

Jason,

Do you have the address and or tax map number for this? Putting together the price now. Sorry for the delay I was out the last two days with a sick little one. I did talk with our principals and we are not interested in quoting the turn key portion of this (hiring the contractor, etc) but we can certainly provide the surveying, design, construction drawings and any permitting required. Would you like me to go ahead and set up the proposal as well? if so I will need the owners names. If you just need the price I can put it on a proposal later.

Stephanie Pohlman Gates, PE

SITE DESIGN, INC
800 East Washington St, Ste B
Greenville, SC 29601
O) 864-271-0496 M) 864-901-1959
www.sitedesign-inc.com

On Mon, Oct 1, 2018 at 2:44 PM Jason Imhoff <JImhoff@wardfirm.com> wrote:

Jason Michael Imhoff

The Ward Law Firm, P.A.

233 S. Pine Street

P.O. Box 5663

Spartanburg, SC 29304

(864) 582-3075

jimhoff@wardfirm.com

From: Jason Imhoff
Sent: Monday, October 01, 2018 2:44 PM
To: Jason Imhoff
Subject:

Download Attachment

Available until Oct 31, 2018

Stephanie Echols

Subject: FW: Sterling Heights

From: Jason Imhoff
Sent: Tuesday, October 23, 2018 8:17 PM
To: Alex Timmons
Cc: damonW@rplfirm.com
Subject: Re: Sterling Heights

Sorry this Thursday

Sent from my iPhone

On Oct 23, 2018, at 6:31 PM, Alex Timmons <jatimmons@wjlaw.net> wrote:

> When does he want or is available to do this?
>
> Sent from my iPhone
>
> On Oct 23, 2018, at 5:34 PM, Jason Imhoff <JImhoff@wardfirm.com> wrote:
>
> > Gentlemen, Site Design needs access to Mr. Garner's back yard to shoot some elevations for a proposal and estimate. Nothing else will be done. Can you please get approval? We do not have a time yet.

Stephanie Echols

Subject: FW: can we get on the property tomorrow?

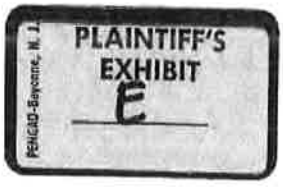
From: Jason Imhoff
Sent: Wednesday, October 24, 2018 3:23 PM
To: Alex Timmons
Subject: Re: can we get on the property tomorrow?

Can we please get some dates that work for Mr. Garner?

Again, this is simply investigative so Site Design can present proposals to Garner and Morgan. No work will be done or decisions made - it's simply fact gathering for a proposal to them.

On Oct 24, 2018, at 2:38 PM, Alex Timmons <jatimmons@wjlaw.net> wrote:

> Mr. Garner is out of the country and will not give permission for anyone to go out there without him. He wants to make sure he is there so he can talk to whomever is coming out so he can have a part of the decision and discussion because it is his property.
>
> Alex
>
> Sent from my iPhone
>
> On Oct 24, 2018, at 2:09 PM, Jason Imhoff <JImhoff@wardfirm.com> wrote:



Stephanie Echols

Subject: FW: can we get on the property tomorrow?

From: Jason Imhoff
Sent: Wednesday, October 24, 2018 2:50 PM
To: Alex Timmons
Subject: RE: can we get on the property tomorrow?

Absolutely ridiculous. Does he know what taking elevations entails???

From: Alex Timmons [mailto:jatimmons@wjlaw.net]
Sent: Wednesday, October 24, 2018 2:38 PM
To: Jason Imhoff
Subject: Re: can we get on the property tomorrow?

Mr. Garner is out of the country and will not give permission for anyone to go out there without him. He wants to make sure he is there so he can talk to whomever is coming out so he can have a part of the decision and discussion because it is his property.

Alex

Sent from my iPhone

On Oct 24, 2018, at 2:09 PM, Jason Imhoff <JImhoff@wardfirm.com> wrote:

Stephanie Echols

Subject: FW: can we get on the property tomorrow?

From: Jason Imhoff
Sent: Wednesday, October 24, 2018 2:09 PM
To: Alex Timmons
Subject: can we get on the property tomorrow?

Stephanie Echols

Subject: FW: Sandy Morgan

From: Jason Imhoff
Sent: Tuesday, October 30, 2018 10:49 AM
To: 'Alex Timmons'
Cc: damonw@rplfirm.com; 'sandman719@att.net'
Subject: Sandy Morgan

Gentlemen, as you may know we have tentatively retained Site Design. Craig Winnell of Site Design has seen the yard by looking over the fence and needs to send a crew to shoot elevations. That work should take 30 minutes and will be scheduled in the next two weeks. Once Site Design has the elevations an engineer will produce a scope of repair to be submitted to the county and used by the repair contractor. We will let you know when Site Design can go to the property. We've asked for at least one week notice.

Obviously Mr. Garner is welcome to call Site Design and Mr. Winnell; however, this initial work is only investigative. The scope of repair won't be produced until after the site visit which may be a more appropriate time for Mr. Garner to speak with Site Design. Also, keep in mind that Site Design bills by the hour.

Please let me know if you have any questions. Also, let us know if the HOA wants to be involved in the project as it is solving an issue for numerous homeowners left unaddressed by the board.

Jason Michael Imhoff
The Ward Law Firm, P.A.
233 S. Pine Street
P.O. Box 5663
Spartanburg, SC 29304

(864) 582-3075

jimhoff@wardfirm.com

Stephanie Echols

Subject: FW: Sterling Estates Case Number: 2016-CP-42-0727

From: Jason Imhoff
Sent: Monday, November 19, 2018 11:43 AM
To: 'Alex Timmons (ATimmons@clawsonandstaubes.com)'
Subject: FW: Sterling Estates Case Number: 2016-CP-42-0727

Anything to report? Can we please let Site Design on site to get the elevations?

From: Jason Imhoff
Sent: Friday, November 16, 2018 10:38 AM
To: Clay Jones; jatimmons@wjlaw.net; damonw@rplfirm.com
Cc: sandman719@att.net
Subject: RE: Sterling Estates Case Number: 2016-CP-42-0727

Alex,

I just left you a message and tried to contact your legal assistant and paralegal, to no avail. We are getting impatient waiting for dates or approval from Mr. Garner to simply shoot elevations in his yard. That team is not making any decisions they are simply gathering information for the engineer to develop a proposal. If Mr. Garner would like to speak to Mr. Jones or anyone else at Site Design before giving approval we would ask that he do so. (contact information below) Otherwise we need dates next week or I've been asked to file a motion and seek attorney fees.

Jason Michael Imhoff
The Ward Law Firm, P.A
233 S. Pine Street
P.O. Box 5663
Spartanburg, SC 29304

(864) 582-3075

jimhoff@wardfirm.com
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From: Jason Imhoff
Sent: Wednesday, November 14, 2018 2:32 PM
To: Clay Jones; jatimmons@wjlaw.net; damonw@rplfirm.com

Cc: sandman719@att.net
Subject: Re: Sterling Estates Case Number: 2016-CP-42-0727

Alex, can you help with this please and let us know when Mr. Garner will let site design on the property?

On Nov 14, 2018, at 2:05 PM, Clay Jones <cjones@sitedesign-inc.com> wrote:

> Jason,
>
> I need to set up our site visit to Survey the property in questions so that our Civil Engineers can design the new layout. We would like to set this up for a morning next week at 9 am Monday-Wednesday. Can you assist with this?
>
> Thanks,
>
> A. Clay Jones, PLS
> Director of Surveying, Partner
>
> SITE DESIGN, INC.
> CIVIL ENGINEERS • SURVEYORS • LANDSCAPE ARCHITECTS
> 800 E. WASHINGTON ST., STE B, GREENVILLE, SC 29601
> O) 864-271-0496 F) 864-271-0402
>
> WWW.SITEDESIGN-INC.COM

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF SPARTANBURG)	CA#: 2016-CP-42-0727
)	
William A. Morgan,)	
)	
Plaintiff,)	
)	NOTICE OF MOTION AND MOTION
v.)	TO ENFORCE SETTLEMENT
)	
Sterling Estates Homeowner's Association, Inc. and Paul Thomas Garner,)	
)	
Defendants.)	
)	

TO: THE DEFENDANTS PAUL THOMAS GARNER AND HIS ATTORNEY, ALEX TIMMONS AND STERLING ESTATES HOMEOWNER'S ASSOCIATION, INC. AND ITS ATTORNEY, DAMON C. WLODARCZYK

You will please take notice that the undersigned attorney for the Plaintiff will move before the resident or presiding judge of the Greenville Court of Common Pleas on the tenth day after service hereof, or as soon thereafter as counsel may be heard, at such time and place as the court may determine for an order enforcing the settlement agreement entered into by the parties in this action. This motion will be based upon the following grounds:

1. The parties in this action entered into a settlement agreement on the record before the Honorable Keith Kelly.

2. The terms of the settlement agreement are clear and unambiguous.

3. The terms of the settlement agreement provide that if the Plaintiff, through his attorney, and through settlement negotiations, would dismiss its action, the Defendant would allow an engineer access to the property to provide a proposal for repair. Defendant may request revisions or changes. A contractor would then perform the repair based upon the engineering.

PLAINTIFF'S EXHIBIT H

4. Subsequent to the settlement agreement, Plaintiff William A. Morgan took steps and expended money with the intention of resolving the claim and performing the terms of the settlement agreement (Exhibit A).

5. Defendant Garner's counsel has yet to prepare a Release pursuant to the settlement agreement.

6. Defendant Garner refuses to provide access to the property so that an engineering firm can "shoot elevations" to provide a proposal (Exhibit A).

7. The Plaintiff requests an order directing the Defendant Garner to comply with the terms of the settlement agreement and allow access to the property to take measurements and elevations.

8. The Plaintiff seeks damages consisting of the cost of complying with the settlement terms as well as attorney's fees and costs associated to bring this motion.

9. This Motion to Enforce the Settlement Agreement should be granted as a matter of law.

This Motion will be based upon the pleadings which have been filed in this action, the letters attached hereto, and upon the applicable statutory and common law and the agreement previously put on the record.

Jason M. Imhoff (S.C. Bar #69355)
The Ward Law Firm, P.A.
P.O. Box 5663
Spartanburg, SC 29304-3188
Telephone (864) 582-3075
Facsimile (864) 585-3090

Attorney for Plaintiff William A. Morgan

November 20, 2018

Jason Imhoff

From: Jason Imhoff
Sent: Wednesday, October 24, 2018 3:23 PM
To: Alex Timmons
Subject: Re: can we get on the property tomorrow?

Can we please get some dates that work for Mr. Garner?

Again, this is simply investigative so Site Design can present proposals to Garner and Morgan. No work will be done or decisions made - it's simply fact gathering for a proposal to them.

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>
> Sent from my iPhone
>
> On Oct 24, 2018, at 2:09 PM, Jason Imhoff <JImhoff@wardfirm.com> wrote:

Jason Imhoff

From: Jason Imhoff
Sent: Tuesday, October 30, 2018 10:49 AM
To: 'Alex Timmons'
Cc: damonw@rplfirm.com; 'sandman719@att.net'
Subject: Sandy Morgan

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Obviously Mr. Garner is welcome to call Site Design and Mr. Winnell; however, this initial work is only investigative. The scope of repair won't be produced until after the site visit which may be a more appropriate time for Mr. Garner to speak with Site Design. Also, keep in mind that Site Design bills by the hour.

Please let me know if you have any questions. Also, let us know if the HOA wants to be involved in the project as it is solving an issue for numerous homeowners left unaddressed by the board.

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Spartanburg, SC 29304

(864) 582-3075

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Jason Imhoff

From: Jason Imhoff
Sent: Monday, November 19, 2018 11:43 AM
To: 'Alex Timmons (ATimmons@clawsonandstaubes.com)'
Subject: FW: Sterling Estates Case Number: 2016-CP-42-0727

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To: Clay Jones; jatimmons@wjlaw.net; damonw@rplfirm.com
Cc: sandman719@att.net
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To: Clay Jones; jatimmons@wjlaw.net; damonw@rplfirm.com
Cc: sandman719@att.net
Subject: Re: Sterling Estates Case Number: 2016-CP-42-0727

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> O) 864-271-0486 F) 864-271-0402
>
> WWW.SITEDESIGN-INC.COM

Jason Imhoff

From: Jason Imhoff
Sent: Monday, November 19, 2018 12:56 PM
To: Alex Timmons; damonw@rplfirm.com
Subject: Fwd: Sterling Estates

Heads up. I've got to file a motion

From: Craig Winnall <cwinnall@sitedesign-inc.com>
Date: November 19, 2018 at 11:44:10 EST
To: "Wm. A. Sandy Morgan" <sandman719@att.net>
Cc: Clay Jones <cjones@sitedesign-inc.com>
Subject: RE: Sterling Estates

Sandy,

Hope you're doing well. Received a call last week from your neighbor and was finally able to call him back just now. According to him no one from our firm is allowed to be on his property. He mentioned he hadn't seen the settlement and doesn't know the outcome. Not sure where you want us to go from here, but from what he told me it looks like we won't be able to survey until this is resolved. He stated you "prematurely" hired us. Let us know when this is resolved and we'll move forward. Thanks.

Craig S. Winnall, P.E

From: Wm. A. "Sandy" Morgan <sandman719@att.net>
Sent: Wednesday, October 24, 2018 7:54 AM
To: 'Craig Winnall' <cwinnall@sitedesign-inc.com>
Subject: RE: Sterling Estates

Perfect! See you Thursday @ 1:00.

From: Craig Winnall [mailto:cwinnall@sitedesign-inc.com]
Sent: Tuesday, October 23, 2018 17:35
To: Wm. A. Sandy Morgan
Subject: RE: Sterling Estates

1 pm.

Craig S. Winnall, P.E

From: Wm. A. "Sandy" Morgan <sandman719@att.net>
Sent: Tuesday, October 23, 2018 5:19 PM
To: 'Craig Winnall' <cwinnall@sitedesign-inc.com>

Cc: sandman719@att.net
Subject: RE: Sterling Estates

That works for me. I'll have to clear it with my neighbor but don't foresee a problem. Let's plan on that. Do you have a general time frame of your arrival?

Wm. A."Sandy" Morgan
Custom Production Services
730 Sterling Dr
Spartanburg, SC 29316
(864)814-1221 (Office)
(864)814-1219 (Fax)
(864)542-3228 (Cell)
Sandman719@att.net

From: Craig Winnall [mailto:cwinnall@sitedesign-inc.com]
Sent: Tuesday, October 23, 2018 17:05
To: Wm. A. Sandy Morgan
Subject: RE:

Is Thursday a good time? We'll be in Spartanburg in the morning for a meeting and could then just head over to Boiling Springs.

Craig S. Winnall, P.E

From: Wm. A. "Sandy" Morgan <sandman719@att.net>
Sent: Tuesday, October 23, 2018 10:41 AM
To: cwinnall@sitedesign-inc.com
Subject: FW:

From: Jason Imhoff [mailto:JImhoff@wardfirm.com]
Sent: Tuesday, October 23, 2018 9:52 AM
To: 'sandman719@att.net'
Subject:

These are just the final plats, but it shows the drains and pipe. She's going to look for the site plan.

Stephanie Echols

From: Jason Imhoff
Sent: Friday, December 14, 2018 11:41 AM
To: Damon Wlodarczyk; Alex Timmons
Cc: Stephanie Echols
Subject: RE: William A. Morgan vs. Paul T. Garner et al.

Gentlemen,

We've had a lot of snow and now rain. Mr. Morgan's yard is devastated. Has Mr. Garner identified an engineer or received a proposal to do the repair? Please let us know something as soon as possible.

Jason Michael Imhoff
The Ward Law Firm, P.A.
233 S. Pine Street
P.O. Box 5663
Spartanburg, SC 29304

(864) 582-3075

jimhoff@wardfirm.com
CONFIDENTIAL & PRIVILEGED

From: Jason Imhoff
Sent: Thursday, December 06, 2018 11:33 AM
To: 'Damon Wlodarczyk'; Alex Timmons
Cc: Stephanie Echols
Subject: RE: William A. Morgan vs. Paul T. Garner et al.

Gentlemen,

As Alex and I discussed this morning my client will not sign this agreement. It seems clear that Mr. Garner is intentionally trying to delay and prevent the repair agreed to at the settlement hearing on the day of trial. This agreement gives him more avenues to continue his unnecessary and unreasonable delay.

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expended time, money, and effort to attempt to get elevations for the property which are necessary before any proposal could be offered/accepted/or rejected. Mr. Garner will not even let that occur.

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The only other option is returning to the court and letting Mr. Garner explain why he has refused to provide dates and access to his property for a $1000 engineering project on the basis of "prior litigation". We will be asking for costs at that hearing.

We will also ask why the HOA is not intervening and facilitating this repair as it has the right, and arguably the obligation, to do.

If you have any thoughts on how to deal with this increasingly frustrating, yet simple, matter we're happy to hear your thoughts.

Jason Michael Imhoff
The Ward Law Firm, P.A.
233 S. Pine Street
P.O. Box 5663
Spartanburg, SC 29304

(864) 582-3075

jimhoff@wardfirm.com

From: Damon Wlodarczyk [mailto:damonW@rplfirm.com]
Sent: Tuesday, November 27, 2018 9:24 AM
To: Alex Timmons; Jason Imhoff
Subject: RE: William A. Morgan vs. Paul T. Garner et al.

I made one redline revision re: Sterling Estates. I'll need to submit the release to the board for approval once it's finalized.

RILEY POPE & LANEY LAW

Damon C. Wlodarczyk | Attorney and Counselor at Law
(Licensed in South Carolina)
Riley Pope & Laney, LLC
Telephone: 803.799.9993 | Facsimile 803.239.1414
www.rplfirm.com
2838 Devine Street, Columbia, SC 29205

North Carolina Office:
Riley Pope & Laney, PLLC | Telephone: 980.201.3888
4822 Albemarle Road, Suite 248, Charlotte, NC 28205

From: Alex Timmons <jatimmons@wjlaw.net>
Sent: Tuesday, November 27, 2018 1:57 AM
To: Damon Wlodarczyk <damonW@rplfirm.com>; 'JImhoff@wardfirm.com' <JImhoff@wardfirm.com>
Subject: William A. Morgan vs. Paul T. Garner et al.

Jason and Damon,

Please see attached a revised Release in the above matter. Please let me know if any changes need to be made.

Also just to update you, Mr. Morgan talked to Craig at site design last week after they played phone tag for a little while.

I think once Mr. Morgan has the executed settlement agreement in his hands it will hopefully make this process a lot smoother.

If either of you have any questions or would like to discuss please feel free to contact me.

Thank you,
Alex

WJC&B
WILLSON JONES CARTER & BAXLEY, P.A.

J. Alex Timmons, Attorney
jatimmons@wjlaw.net
872 S. Pleasantburg Drive
Greenville, South Carolina 29607
Phone: (864) 908-3814
Fax: (864) 241-5372
wjcblaw.com

Stephanie Echols

Subject: FW: William A. Morgan vs. Paul T. Garner et al.

From: Jason Imhoff
Sent: Friday, January 04, 2019 5:59 PM
To: 'Alex Timmons'
Subject: RE: William A. Morgan vs. Paul T. Garner et al.

864-616-1510

Give me 5 to get in my car

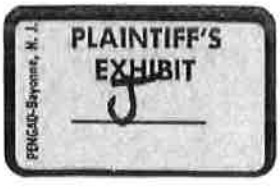
From: Alex Timmons [mailto:jatimmons@wjlaw.net]
Sent: Friday, January 04, 2019 5:50 PM
To: Jason Imhoff
Subject: Re: William A. Morgan vs. Paul T. Garner et al.

What is your cell number I have a few minutes to discuss.

Sent from my iPhone

On Jan 4, 2019, at 5:35 PM, Jason Imhoff <JImhoff@wardfirm.com> wrote:

> I'm not sure I agree with that. The intent of Mr. Garner getting his own engineer and builder was that we could specify the work to be done and consummate the settlement including the release. We've invited Mr. Garner to obtain or identify an engineer and builder of his choice and haven't heard anything in response. We can only assume he has not done so.
>
> Frankly, Mr. Morgan is pissed. The record rainfall over the last months and Mr. Garner's refusal to help or even wave back have convinced Mr. Morgan that Garner is simply being vindictive. In the meantime, Mr. Garner has begun his own construction project as his house. Mr. Morgan has asked me to seek fees and costs and even told me to put the case back on the jury docket.
>
> We wish you luck Alex but we don't have any faith in Mr. Garner being a reasonable person. Maybe if the HOA would do its job....
>
> Jason Michael Imhoff
> The Ward Law Firm, P.A.
> 233 S. Pine Street
> P.O. Box 5663
> Spartanburg, SC 29304
>
> (864) 582-3075
>
> jimhoff@wardfirm.com
> CONFIDENTIAL & PRIVILEGED



From: Alex Timmons [mailto:jatimmons@wjlaw.net]
Sent: Friday, January 04, 2019 5:17 PM
To: Jason Imhoff
Cc: damonW@rplfirm.com; Stephanie Echols
Subject: Re: William A. Morgan vs. Paul T. Garner et al.

Jason,

You never indicated that all you needed were the an engineering plan and estimate to the previously proposed release. You simply indicated that your client would not sign.

I apologize for any delay on my part which would be the end of December until now. I was in trial then went right into the holidays. I have essentially been off because of family for over the last two weeks. I will work on this with Mr. Garner and see what we can come up with.

I will work on it next week. I am still out of the office but wanted to touch base with you because I thought about it.

Thanks,
Alex

Sent from my iPhone

On Jan 4, 2019, at 5:10 PM, Jason Imhoff <JImhoff@wardfirm.com> wrote:

> As we've stated previously, the only option is to add the engineering and construction proposal to the release. We'd spend years trying to create a release that satisfies both parties at this point. Your client agreed to allow the repair to occur on this property. The simplest and easiest thing to do is attach an engineering plan and construction estimate to the release so everyone knows exactly what is going to occur. We tried to do that and were denied even getting access to the property. Since then, we have repeatedly requested that your client either retain an engineer and builder of his choosing or give us a list of "approved" engineers and builders. We have heard absolutely nothing as South Carolina continues to experience record rainfall. Your client is intentionally and unreasonably delaying this process and I've been directed to get in front of a judge and seek any redress the court will afford him.
>
> Have Mr. Garner get a proposal and we'll attach it to the release. It's as simple as that.
>
> Jason Michael Imhoff
> The Ward Law Firm, P.A.

233 S. Pine Street
P.O. Box 5663
Spartanburg, SC 29304

(864) 582-3075

jimhoff@wardfirm.com
CONFIDENTIAL & PRIVILEGED

From: Alex Timmons [mailto:jatimmons@wjlaw.net]
Sent: Friday, January 04, 2019 4:13 PM
To: Jason Imhoff
Cc: damonW@rplfirm.com
Subject: Re: William A. Morgan vs. Paul T. Garner et al.

Jason,

I presented a proposed settlement agreement to you a while ago. All I received back was that your client would not sign it. Can you and me what you would propose as revisions. My client is not willing to move forward until he has a signed agreement. Let's get this done.

Alex

Sent from my iPhone

On Dec 14, 2018, at 11:41 AM, Jason Imhoff <JImhoff@wardfirm.com> wrote:

> Gentlemen,
>
> We've had a lot of snow and now rain. Mr. Morgan's yard is devastated. Has Mr. Garner identified an engineer or received a proposal to do the repair? Please let us know something as soon as possible.
>
> Jason Michael Imhoff
> The Ward Law Firm, P.A.
> 233 S. Pine Street
> P.O. Box 5663
> Spartanburg, SC 29304

(864) 582-3075

jimhoff@wardfirm.com
CONFIDENTIAL & PRIVILEGED

From: Jason Imhoff
Sent: Thursday, December 06, 2018 11:33 AM
To: 'Damon Wlodarczyk'; Alex Timmons
Cc: Stephanie Echols
Subject: RE: William A. Morgan vs. Paul T. Garner et al.

Gentlemen,

As Alex and I discussed this morning my client will not sign this agreement. It seems clear that Mr. Garner is intentionally trying to delay and prevent the repair agreed to at the settlement hearing on the day of trial. This agreement gives him more avenues to continue his unnecessary and unreasonable delay.

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If you have any thoughts on how to deal with this increasingly frustrating, yet simple, matter we're happy to hear your thoughts.

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Sent: Tuesday, November 27, 2018 9:24 AM
To: Alex Timmons; Jason Imhoff
Subject: RE: William A. Morgan vs. Paul T. Garner et al.

I made one redline revision re: Sterling Estates. I'll need to submit the release to the board for approval once it's finalized.

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From: Alex Timmons <jatimmons@wjlaw.net>
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To: Damon Wlodarczyk <damonW@rplfirm.com>; 'Jlmhoff@wardfirm.com' <Jlmhoff@wardfirm.com>
Subject: William A. Morgan vs. Paul T. Garner et al.

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If either of you have any questions or would like to discuss please feel free to contact me.

Thank you,
Alex

<image006.png>

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872 S. Pleasantburg Drive
Greenville, South Carolina 29607
Phone: (864) 908-3814
Fax: (864) 241-5372
wjcblaw.com

Stephanie Echols

Subject: FW: William A. Morgan vs. Paul T. Garner et al.
Attachments: 2019-01-21 Paul Garner Survey Proposal.pdf

From: Alex Timmons [mailto:jatimmons@wjlaw.net]
Sent: Wednesday, January 23, 2019 4:06 PM
To: Jason Imhoff
Cc: Damon Wlodarczyk (damonW@rplfirm.com)
Subject: William A. Morgan vs. Paul T. Garner et al.

Jason,

Mr. Garner has contacted the three companies that I previously forwarded you and here are their responses or quotes.

1. D&S Land Surveying - $1,000.00 to do a topographic site map of your backyard drainage problem with a 2-3 week start availability

2. Husky & Husky - Left voice message indicating a 5-6 week backlog and to call if I was interested

3. Summit Engineering Group - Came to the house to view the yard. See attached.

Mr. Helms with Summit appeared to be the most interested and professional. He indicated that his firm could also provide Engineering services to include a stamped and signed engineered drawing of the proposed work.

Please let me know if any of these you are okay with and we can get this matter moving along. If you would like to discuss please feel free to contact me.

Thank you,
Alex

WJC&B
WILLSON JONES CARTER & BAXLEY, P.A.

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Fax: (864) 241-5372
wjcblaw.com

PLAINTIFF'S EXHIBIT K

SUMMIT
ENGINEERING GROUP INC.
ENGINEERS • PLANNERS • SURVEYORS

January 21, 2019

Mr. Paul Garner
736 Sterling Dr.
Boiling Springs, SC 29316

Re: 736 Sterling Dr.
Drainage Survey Proposal

Dear Mr. Garner,

Summit Engineering Group, Inc. appreciates the opportunity to provide our services to you for the drainage survey and catch basin relocation for the above referenced property. Based on our meeting and information provided to us, we are pleased to present this proposal to you for our Engineering and Surveying Services.

I. Scope:

A. Services to be provided:

1. Topographic survey and "as-built" for the backyard (fenced in area).
2. Prepare an existing condition drawing for the back yard.
3. Prepare plan and details for the installation of a new catch basin (to be located in the drainage swale).

II. Items not included (Additional Services):

A. Permitting

Note: All Additional Services will be billed at the Hourly Rate Schedule that is enclosed with this letter. Special or additional services shall not be performed unless so authorized by the OWNER in writing prior to performance of the service.

III. Compensation and Schedule of Reimbursement:

A. The fee for these services will be based on actual salary costs times a multiplier of 3.0, plus expenses not to exceed the prices listed below.

1.	Surveying (includes existing condition plan)	$ 1,000.00
2.	Plan and Details (new catch basin plan)	$ 500.00
	Total:	$ 1,500.00

* Invoicing will include the cost of reimbursable expenses such as mileage, subcontractor costs, etc.

Once again, thank you for the opportunity and please let us know if you have any questions or need any additional information.

Sincerely,
Summit Engineering Group, Inc.

Clay M. Helms, P.E.
Principal

ATTACHMENT "A"
HOURLY RATE SCHEDULE
SUMMIT ENGINEERING GROUP, INC.

Schedule 19A

Hourly Rate Schedule and Chargeable Expenses for Engineering Services Provided

Employee Classification	Rate per Hour
Principal	$150.00
Senior Project Manager	$145.00
Project Manager	$130.00
Electrical Designer	$130.00
Senior Project Engineer	$125.00
Project Engineer II	$110.00
Project Engineer I	$100.00
Engineering Associate	$95.00
Project Representative III	$95.00
Project Representative II	$90.00
Project Representative I	$80.00
Design Technician	$90.00
CADD III	$80.00
CADD II	$70.00
CADD I	$60.00
Administrative Services	$55.00

Survey and GIS Services

Surveying Manager	$95.00
Survey Crew Chief	$65.00
Instrument Operator	$55.00
GIS Analyst/Programmer	$105.00
GIS Specialist	$95.00
GIS Technician	$65.00
Rodman	$50.00

Equipment

Leica 530 GPS Survey Station	$45.00 per calendar day
Digital Hydrant Mounted Pressure Recorder	$10.00 per calendar day

Other

Chargeable expenses	Actual cost plus ten percent
Overtime	Hourly rate plus fifty percent
Courtroom appearances (to include preparation)	Hourly rate plus fifty percent

Effective Dates: January 1, 2019 to June 30, 2019

Note: Any revision or update in this hourly rate schedule shall be included in Agreements of which this page is part.

Issued: 1-1-2019

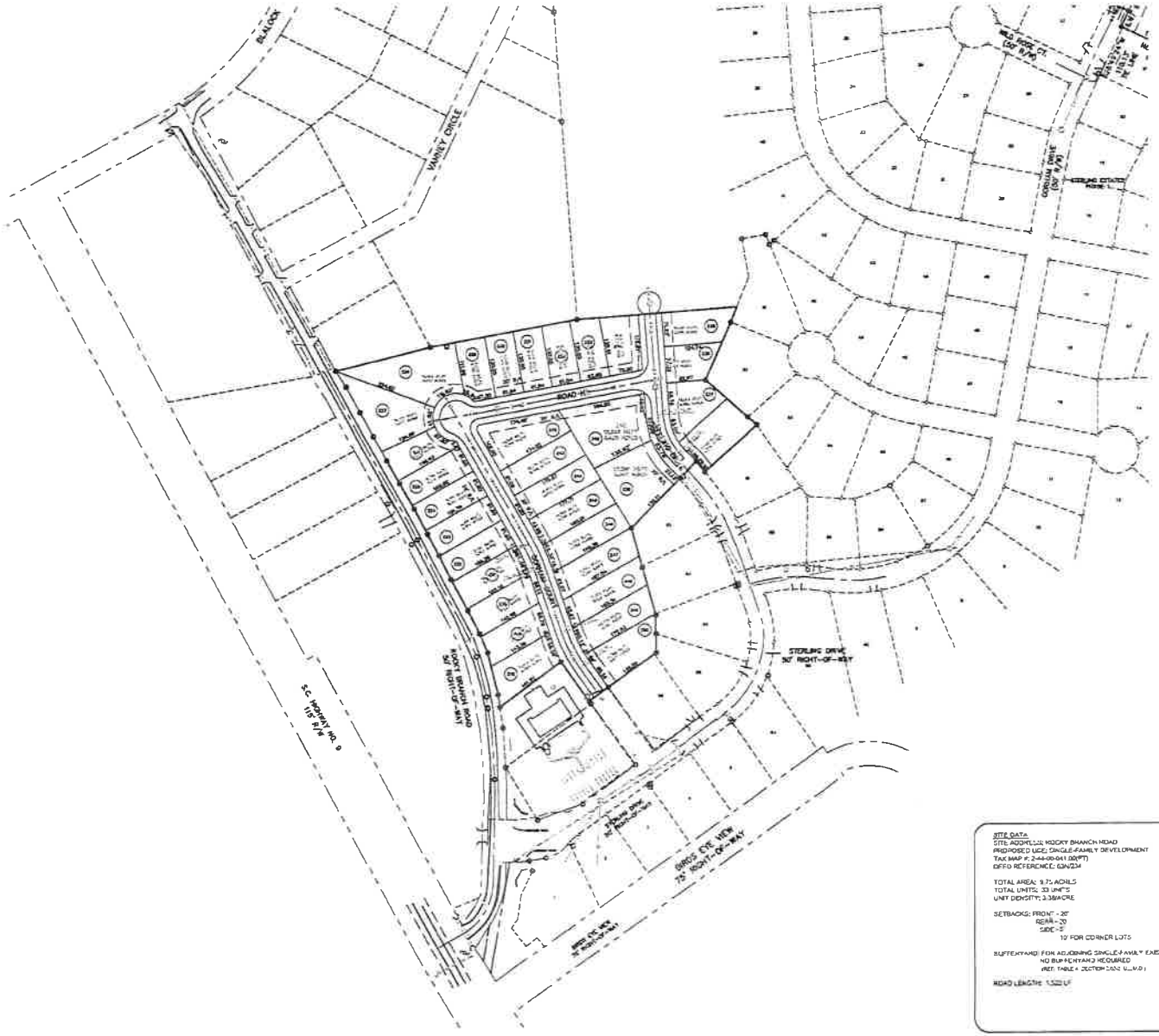
Stephanie Echols

Subject: FW: Summit
Attachments: Sterling Estates Phase 4 Section 1 Stormwater Managment Plans.pdf

From: Jason Imhoff
Sent: Thursday, January 24, 2019 5:12 PM
To: 'Clay Helms'
Subject: RE: Summit

From: Clay Helms [mailto:chelms@summitengineeringgroup.com]
Sent: Thursday, January 24, 2019 5:12 PM
To: Jason Imhoff
Subject: Summit

Clay M. Helms, P.E.
Principal
Summit Engineering Group, Inc.
9601 Warren H. Abernathy Hwy
Spartanburg, SC 29301
Phone: (864) 949-1111
Fax: (864) 949-1110
www.summitengineeringgroup.com



SITE DATA
SITE ADDRESS: ROCKY BRANCH ROAD
PROPOSED USE: SINGLE-FAMILY DEVELOPMENT
TAX MAP #: 2-44-00-041.00(PT)
DHEC REFERENCE: 63N234

TOTAL AREA: 9.7± ACRES
TOTAL UNITS: 33 UNITS
UNIT DENSITY: 3.38/ACRE

SETBACKS: FRONT - 20'
REAR - 20'
SIDE - 5'
10' FOR CORNER LOTS

BUFFERYARD: FOR ADJOINING SINGLE-FAMILY EXISTING USE
NO BUFFERYARD REQUIRED
(REF: TABLE 4 SECTION 240-C, U.L.D.)

ROAD LENGTH: 1,320 LF

LOCATION MAP

Freeland
SURVEYORS + ENGINEERS
FREELAND & ASSOCIATES, INC.
ENGINEERS + LAND SURVEYORS
203 WEST STONE AVENUE
GREENVILLE, S.C., 29609
PHONE: (864) 271-4824
FAX: (864) 233-0315

NO	DATE	DESCRIPTION	DKT
1	4-16-04	REVISED LOT LAYOUT	DY

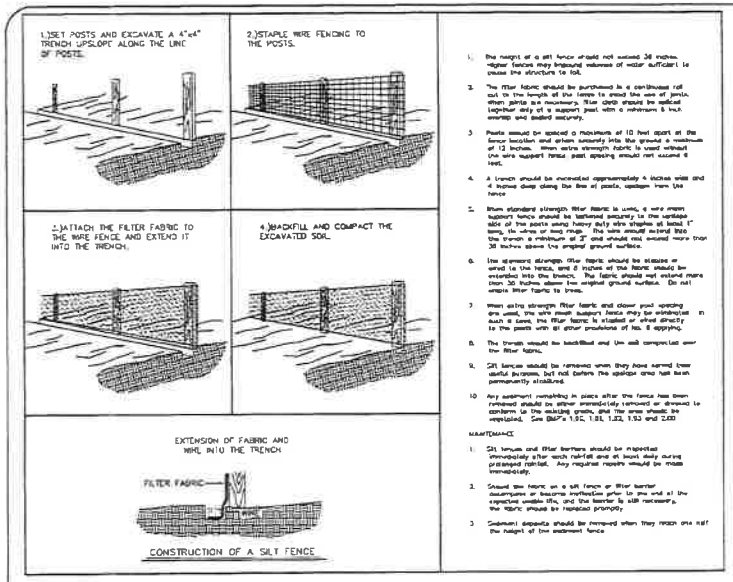
0' 100' 200'
SCALE 1" = 100'

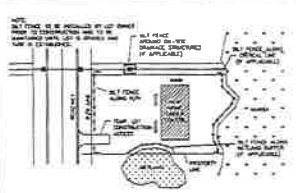
PLAT BOOK	52/184-186
TAX MAP	2-44-00-41(PT)
DESIGN	DKT
DATE	2-23-04
DWG. NO.	3314

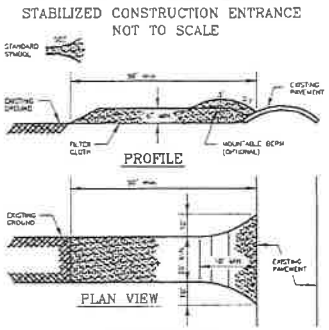
STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

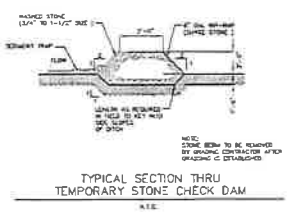
STERLING ESTATES
PHASE 4 - SECTION 1
SITE PLAN

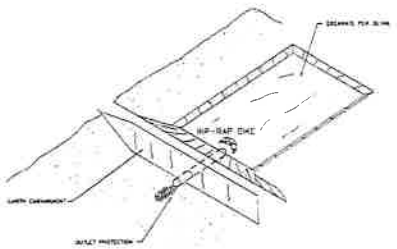
SP-1

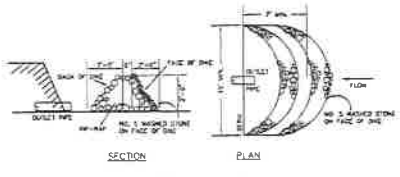


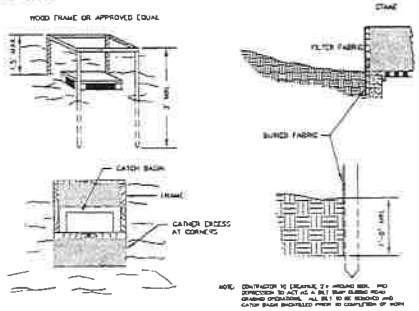


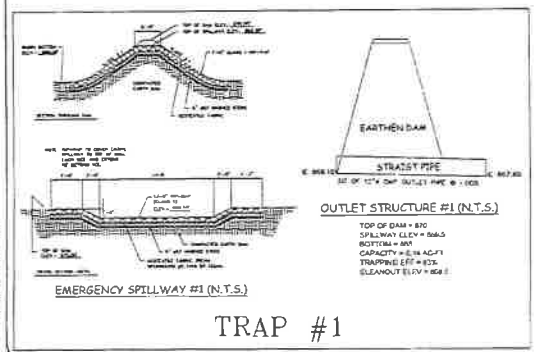


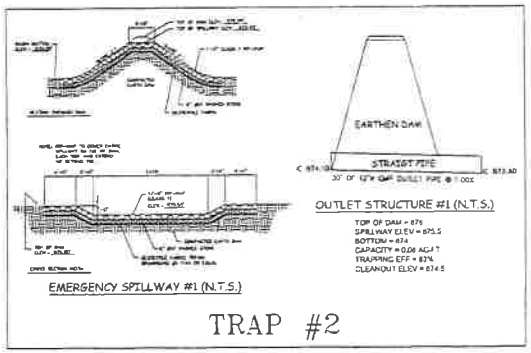


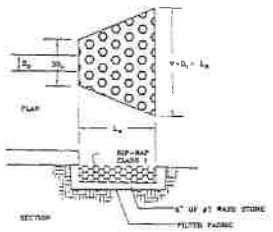


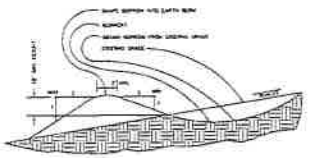


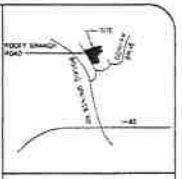












FREELAND & ASSOCIATES, INC.
ENGINEERS • LAND SURVEYORS
323 WEST STONE AVENUE
GREENVILLE, S.C. 29609
PHONE: (864) 271-4924
FAX (864) 233-0315

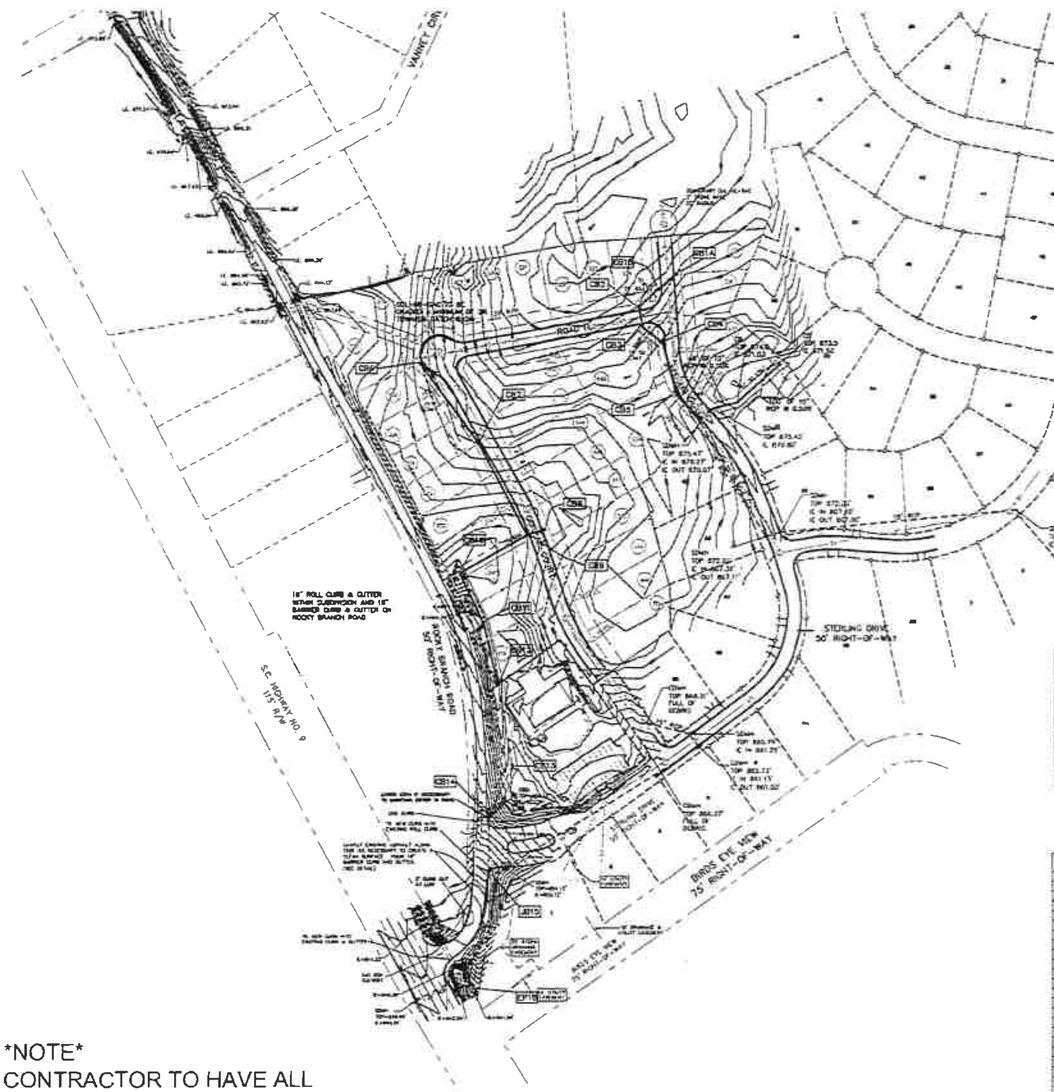
NO	DATE	DESCRIPTION	BY
2	3-15-04	REVISED PER SPTBG E.S.	DKT
1	1-30-04	REVISED DETAILS	DKT

PLAT BOOK	52/184-186
TAX MAP	2-44-00-41(PT)
DESIGN	DKT
DATE	12-20-04
DWG. NO	5313a

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

STERLING ESTATES
PHASE 4 - SECTION 1
STORMWATER MANAGEMENT
AND EROSION CONTROL
DETAILS

E-2



NOTE
CONTRACTOR TO HAVE ALL UNDERGROUND UTILITIES LOCATED BEFORE BEGINNING WORK.

NOTES:

1. ALL CONTRACTORS TO FOLLOW THE STORMWATER AND EROSION CONTROL PLAN.

2. AS-BUILT PLANS WILL BE CERTIFIED BY THE DESIGN ENGINEER.

3. ALL CATCH BASINS TO BE CONSTRUCTED OF BRICK (NO PRECAST CATCH BASINS).

4. PRECAST STRUCTURES ARE NOT ACCEPTABLE. ANY STRUCTURE WHICH MAY BE SUBJECTED TO WHEEL TRAFFIC MUST BE DESIGNED TO WITHSTAND HS-20 LOADING.

5. CATCH BASINS DEEPER THAN 4 ½ FEET MUST BE CONSTRUCTED WITH STEPS. THE DEPTH OF CATCH BASIN SHALL BE MEASURED FRONT THE POINT OF ACCESS FOR MAINTENANCE.

6. CONCENTRATED FLOW PATTERNS ARE SHOWN WITH ARROWS. CONCENTRATED STORMWATER DISCHARGE ON ALL LOTS IS TO BE ROUTED ALONG PROPERTY LINES WITHIN DRAINAGE EASEMENTS. CONTRACTORS WILL GRADE EACH LOT SO THAT NO CONCENTRATED STORMWATER DISCHARGE WILL BE DIRECTED ONTO ADJACENT LOTS. THE ENGINEER ASSUMES NO RESPONSIBILITY FOR THE GRADING OF INDIVIDUAL LOTS BY HOME BUILDERS.

7. INDIVIDUAL PROPERTY OWNERS ARE RESPONSIBLE FOR THE MAINTENANCE OF DRAINAGE EASEMENTS WITHIN DRAINAGE EASEMENTS.

8. PLACE INLET PROTECTION AT ALL CATCH BASINS TO PROTECT THE PIPING SYSTEM FROM SEDIMENTATION. SEE SHEET E-2 FOR DETAIL.

9. ALL ROADWAY AND DRAINAGE CONSTRUCTION IS TO CONFORM TO SPARTANBURG COUNTY STANDARD SPECIFICATIONS FOR CONSTRUCTION OF ROADS (DATED DECEMBER 1993).

STRUCT	TYPE	THROAT ELEV	INV ELEV IN	INV ELEV OUT	Q SURFACE (cfs)	Q ENTER (cfs)	Q EXIT (cfs)
CB1A	SINGLE WING	882.47	–	879.29	1	0	1
CB1B	SINGLE WING	881.57	878.88	"	2	1	3
CB2	SINGLE WING	881.11	877.52	"	2	3	5
CB3	SINGLE WING	881.11	877.29	"	1	5	6
CB4	SINGLE WING	878.90	875.88	"	1	6	7
CB5	SINGLE WING	[illegible]	872.61	"	3	7	10
CBCX	EXISTING	–	870.27				

PIPE RUN	RCP CLASS	LENGTH (ft)	SIZE (in)	SLOPE (%)
CB1A-CB1B	III	39	18	1.00%
CB1B-CB2	III	48	18	1.00%
CB2-CB3	III	37	18	1.00%
CB3-CB4	III	44	18	3.00%
CB4-CB5	II	99	18	2.50%
CB5-CX	III	59	18	3.95%

STRUCT	TYPE	THROAT ELEV	INV ELEV IN	INV ELEV OUT	Q SURFACE (cfs)	Q ENTER (cfs)	Q EXIT (cfs)
CB6	DOUBLE WING	875.60	–	873.31	2	–	2
CB7	SINGLE WING	875.45	870.51		1	2	3
CB8	DOUBLE WING	871.92	868.41		1		
CB8	DOUBLE WING	871.37		867.58	13	–	13
CB9	DOUBLE WING	871.37	867.26	867.58	1	16	17
CB10	ADDED	–	866.38	"	3	17	20
CB11	ADDED	–	861.88	"	1	20	21
CB12	ADDED	–	863.87	"	2	21	23
CB13	ADDED	–	858.04	"	4	23	27
CB14	GRATE	–	855.24	"	3	27	30
JB15	JUNCTION BOX	–	847.58	"	–	30	30
EP16	STANDARD	–	841.30		–	30	30

PIPE RUN	RCP CLASS	LENGTH (ft)	SIZE (in)	SLOPE (%)
CB6-CB7	III	180	15	1.00%
CB7-CB9	III	185	15	1.14%
CB8-CB9	III	32	24	1.00%
CB9-CB10	III	130	24	1.20%
CB10-CB11	III	95	24	1.24%
CB11-CB12	III	113	24	1.00%
CB12-CB13	III	143	24	2.71%
CB13-CB14	III	84	24	5.30%
CB14-JB15	IV	57	24	5.45%
JB15-EP16	III	214	24	2.53%

SITE ADJUSTMENTS MAY BE NECESSARY TO AVOID CONFLICTS WITH UNDERGROUND UTILITIES AND TO MAINTAIN A MINIMUM COVER OF 1' UNDER STERLING DRIVE. CONTRACTOR SHOULD NOTIFY ENGINEER PRIOR TO MAKING SUCH ADJUSTMENTS.

LOCATION MAP

Freeland
SURVEYORS • ENGINEERS
FREELAND & ASSOCIATES, INC.
ENGINEERS • LAND SURVEYORS
323 WEST STONE AVENUE
GREENVILLE, S.C. 29609
PHONE: (864) 271-4924
FAX (864) 235-0315

NO	DATE	DESCRIPTION	BY
5	11-19-04	REVISED STORM DRAIN	DKT
4	7-14-04	ADDED LOT 2 TO STORM DRAIN	DKT
3	4-16-04	REVISED LOT LAYOUT	DKT
2	3-15-04	REVISED PER SPTBG ES	DKT
1	1-30-04	REMOVED DETENTION	DKT

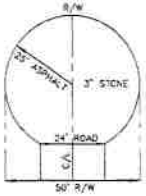
0' 100' 200'
SCALE 1" = 100'

PLAT BOOK	52/184-186
TAX MAP	2-44-00-41(PT)
DESIGN	DKT
DATE	2-20-04
DWG. NO	53134

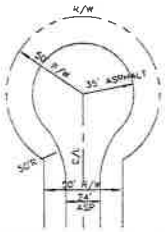
STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

STERLING ESTATES
PHASE 4 - SECTION 1
ROAD & STORM DRAINAGE PLAN

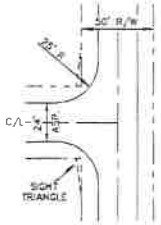
R-1



TEMPORARY CUL-DE-SAC



TYPICAL CUL-DE-SAC

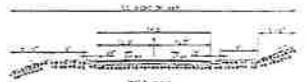


TYPICAL ROADWAY INTERSECTION
N.T.S.

APPENDIX B

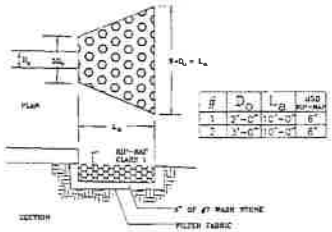
ILLUSTRATIONS
MINIMUM STREET IMPROVEMENT STANDARDS

STANDARD 1B
MINOR RESIDENTIAL



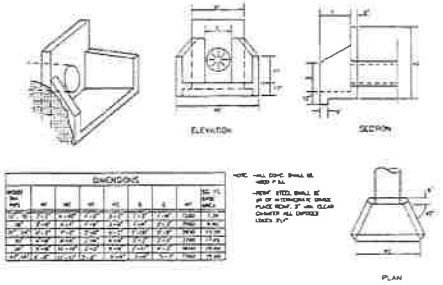
NOTE
All roadway and drainage construction is to conform to the Spartanburg County Standard Specifications for Construction of Roads, latest revision

B-2

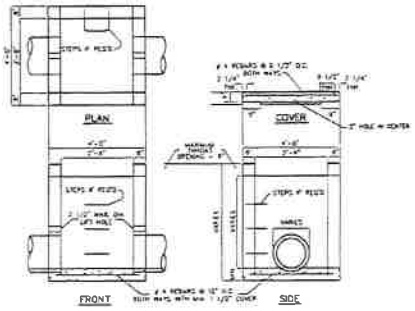


#	D_o	L_R	#50 RIP-RAP
1	3'-0"	10'-0"	6"
2	3'-0"	10'-0"	6"

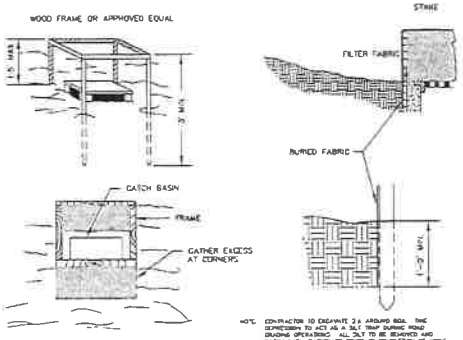
RIP-RAP APRON DETAIL
N.T.S.



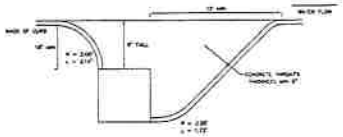
PRECAST CONCRETE HEADWALL
N.T.S.

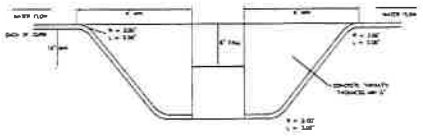


STANDARD CATCH BASIN DETAIL
N.T.S.

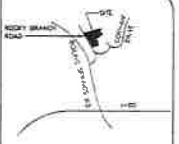


CATCH BASIN PROTECTION
N.T.S.





CATCH BASIN DETAIL



LOCATION MAP

Freeland
SURVEYORS + ENGINEERS

FREELAND & ASSOCIATES, INC.
ENGINEERS + LAND SURVEYORS
223 WEST STONE AVENUE
GREENVILLE, S.C. 29609
PHONE: (864) 271-4924
FAX: (864) 233-0315

NO	DATE	DESCRIPTION	BY
2	3-15-04	REVISED PER SPTBG LS	DKT
1	11-26-03	REVISED DETAILS	DKT

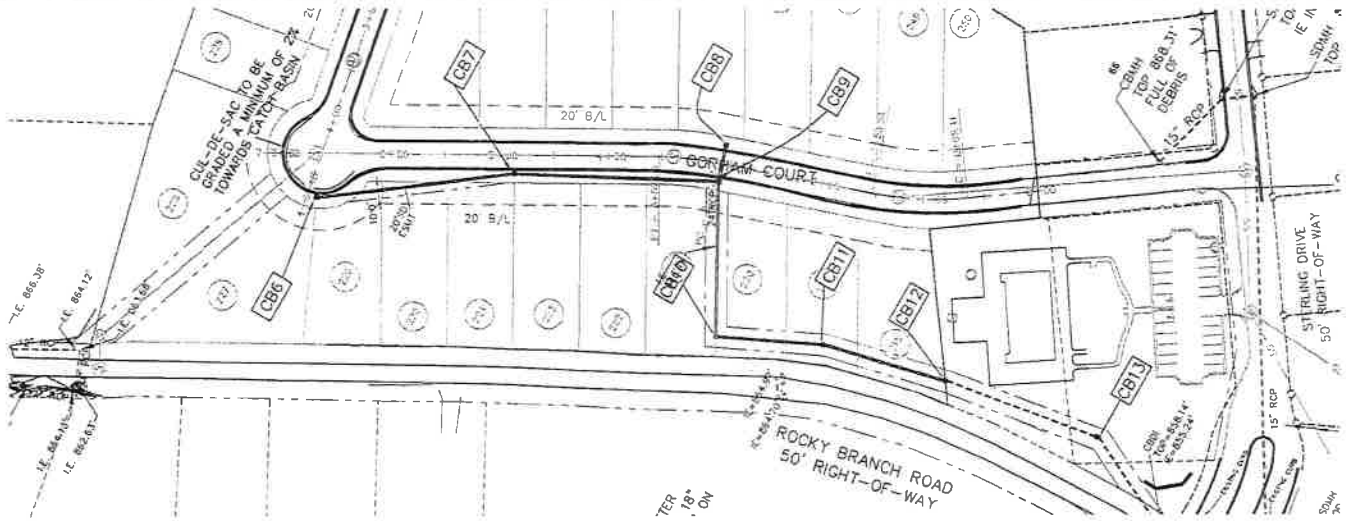
N.T.S.

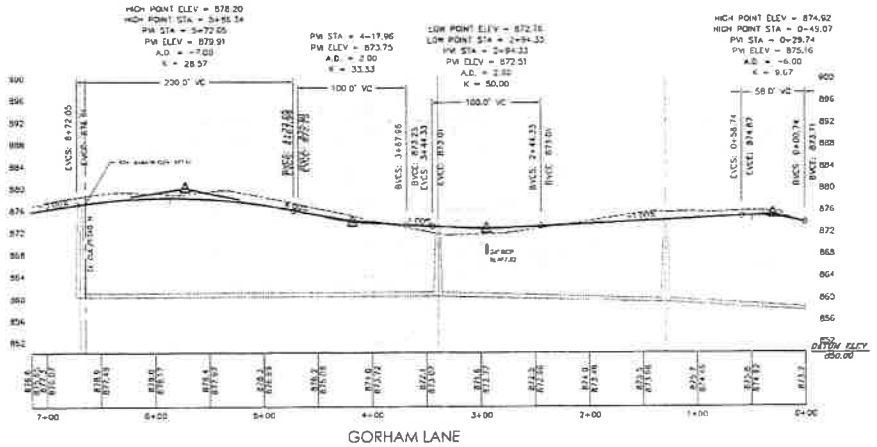
PLAT BOOK	52/184-186
TAX MAP	2-44-00-41(PT)
DESIGN	DKT
DATE	2-20-04
DWG. NO.	5314

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

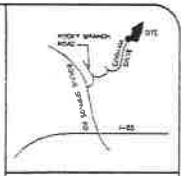
STERLING ESTATES
PHASE 4 - SECTION 1
ROAD & STORM DRAINAGE
DETAILS

R-2





GORHAM LANE



LOCATION MAP

Freeland
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ENGINEERS + LAND SURVEYORS
323 WEST STONE AVENUE
GREENVILLE, S.C. 29609
PHONE: (864) 271-4924
FAX (864) 233-0315

JAMES A. FREELAND PE & PLS #
S.C. REGISTRATION NO. #####

NO	DATE	DESCRIPTION	BY
2	5-29-04	REVISED GORHAM LN	DKT
1	1-30-04	REVISED STORM DRAIN	DKT

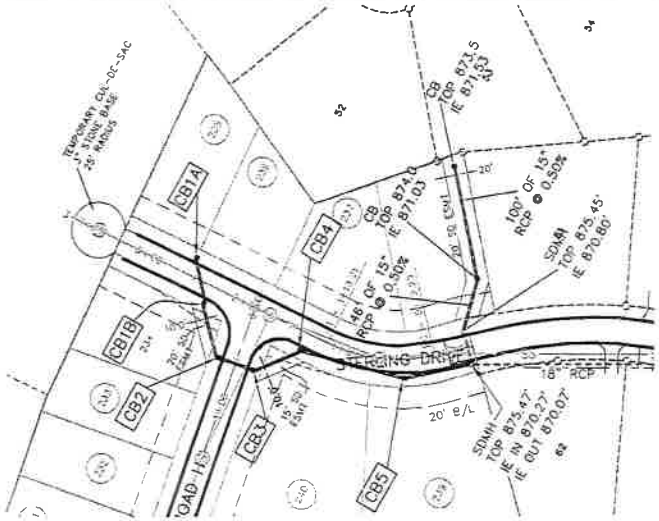
HORIZONTAL 0' 30' 60' SCALE 1" = 30'
VERTICAL 0' 5' 10' SCALE 1" = 10'

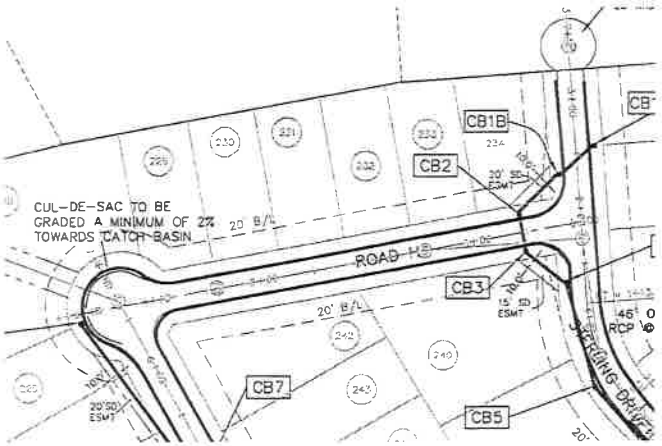
PLAT BOOK	32/184-186
TAX MAP	PART 2-44-01
DESIGN	DKT
DATE	9-22-03
DWG NO.	5314-P

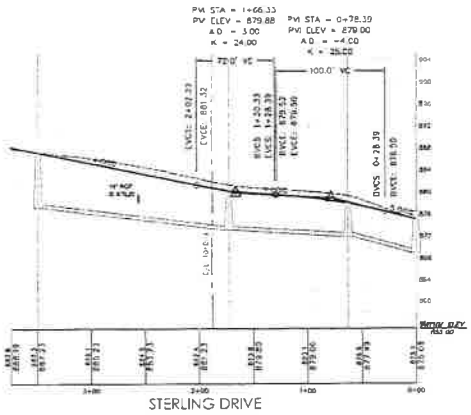
STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

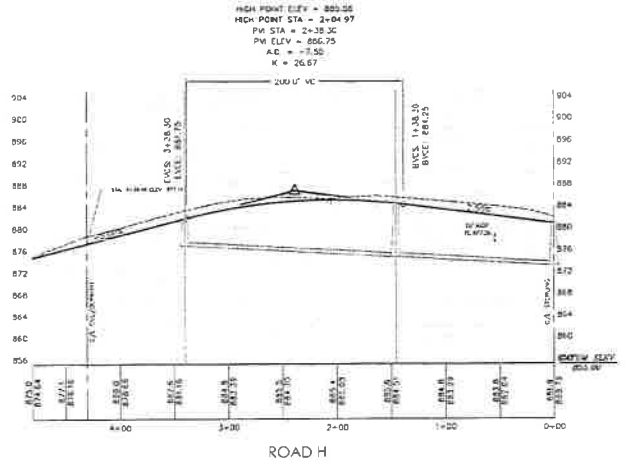
STERLING ESTATES
PHASE 4 - SECTION 1
ROAD PLAN AND PROFILE
GORHAM LANE

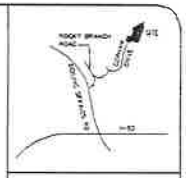
R-3











LOCATION MAP

Freeland
SURVEYORS + ENGINEERS

FREELAND & ASSOCIATES, INC.
ENGINEERS • LAND SURVEYORS
323 WEST STONE AVENUE
GREENVILLE, S.C. 29609
PHONE: (864) 271-4924
FAX: (864) 233-0315

NO	DATE	DESCRIPTION	BY
1	11-30-04	REVISED STORM DRAIN	DHT

HORIZONTAL 0' 50' SCALE 1" = 50'
VERTICAL 0' 10' SCALE 1" = 10'

PLAT BOOK	52/184-186
TAX MAP	PART 2-44-41
DESIGN	DHT
DATE	9-22-03
DWG. NO.	531.54-4

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

STERLING ESTATES
PHASE 4 - SECTION 1
ROAD PLAN AND PROFILE
STERLING DRIVE
ROAD H

R-4

STERLING ESTATES - PHASE 4, SECTION 1
DRAINAGE AREAS SUMMARY
10-YEAR STORM
Q = CIA

AREA NO.	"C"	"I" (in/hr)	AREA (ac.)	RUN-OFF (cfs)
1A	0.80	7	0.25	1
1B	0.80	7	0.25	1
2	0.80	7	0.33	2
3	0.90	7	0.10	1
4	0.90	7	0.11	1
5	0.90	7	0.44	3
6	0.80	7	0.51	3
7	0.90	7	0.10	1
8	0.70	7	2.70	13
9	0.90	7	0.27	2
11	0.7	7	0.55	3
12	0.7	7	0.29	1
13	0.7	7	0.39	1
15	0.7	7	0.81	4
16	0.9	7	0.47	3
17	0.9	7	0.23	1

LOCATION MAP

Freeland
SURVEYORS + ENGINEERS

FREELAND & ASSOCIATES, INC.
ENGINEERS * LAND SURVEYORS
523 WEST STONE AVENUE
GREENVILLE, S.C. 29609
PHONE (864) 271-4924
FAX (864) 233-0315

JAMES D. FREELAND, PE & PLS
SC REGISTERED NO. 11781

NO	DATE	DESCRIPTION	BY
2	3-15-04	REVISED PER SPBG E.S.	DKT
1	1-30-04	REVISED DRAINAGE AREAS	DKT

0' 100' 200'
SCALE 1" = 100'

PLAT BOOK	52/184-186
TAX MAP	2-44-00-41(PT)
DESIGN	DKT
DATE	2-20-04
DWG. NO.	53134

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

STERLING ESTATES
PHASE 4 - SECTION 1
DRAINAGE AREAS
PLAN

D-1

Stephanie Echols

Subject: FW: William A. Morgan vs. Paul T. Garner et al.:

From: Jason Imhoff
Sent: Thursday, January 31, 2019 8:29 AM
To: 'Alex Timmons'
Cc: Damon Wlodarczyk (damonW@rplfirm.com)
Subject: RE: William A. Morgan vs. Paul T. Garner et al.:

Fair enough.

Ok.

I will contact the court.

From: Alex Timmons [mailto:jatimmons@wjlaw.net]
Sent: Wednesday, January 30, 2019 6:02 PM
To: Jason Imhoff
Cc: Damon Wlodarczyk (damonW@rplfirm.com)
Subject: William A. Morgan vs. Paul T. Garner et al.:

Jason,

I just got off the phone with Mr. Garner and he is going to contact Summit tomorrow to get them started on their work. Once we get the scope and drawings from them we are going to have to nail down the Settlement Agreement or Garner is going to want to wait until that is completed.

He is also going to start looking at contractors to see who is potential willing and available to handle this project. I have tried to push on him American Drainfield.

Lastly, does someone need to let the court know that we are going to continue the motion hearing that is set for Friday.

Thank you and if you need to talk to me I will be in the office most of the day tomorrow,

Alex

WJC&B
WILLSON JONES CARTER & BAXLEY, P.A.

J. Alex Timmons, Attorney
jatimmons@wjlaw.net
872 S. Pleasantburg Drive
Greenville, South Carolina 29607
Phone: (864) 908-3814
Fax: (864) 241-5372
wjcblaw.com

From: Jason Imhoff [mailto:JImhoff@wardfirm.com]
Sent: Friday, January 25, 2019 10:20 AM
To: Alex Timmons <jatimmons@wjlaw.net>
Subject: RE: William A. Morgan vs. Paul T. Garner et al. Claim # 0404806069: William A. Morgan vs. Paul T. Garner et al.:

That is correct

From: Alex Timmons [mailto:jatimmons@wjlaw.net]
Sent: Friday, January 25, 2019 10:20 AM
To: Jason Imhoff
Subject: William A. Morgan vs. Paul T. Garner et al.:

Jason,

This email confirms the telephone conversation we just had in which you and your client have given permission to move forward with having Summit go forward with their proposal.

Thank you and have a good weekend,
Alex

WJC&B
WILLSON JONES CARTER & BAXLEY, P.A.

J. Alex Timmons, Attorney
jatimmons@wjlaw.net
872 S. Pleasantburg Drive
Greenville, South Carolina 29607
Phone: (864) 908-3814
Fax: (864) 241-5372
wjcblaw.com

Stephanie Echols

Subject: FW: William A. Morgan vs. Paul T. Garner et al.:

From: Jason Imhoff
Sent: Friday, February 01, 2019 10:11 AM
To: 'sandman719@att.net'
Subject: FW: William A. Morgan vs. Paul T. Garner et al.:

From: Alex Timmons [mailto:jatimmons@wjlaw.net]
Sent: Friday, February 01, 2019 10:11 AM
To: Jason Imhoff
Subject: Re: William A. Morgan vs. Paul T. Garner et al.:

Garner said sandy cannot come on his property without him there so tell Sandy to get Summit to come over to his side of the fence. Sorry I tried.

Sent from my iPhone

On Feb 1, 2019, at 9:57 AM, Jason Imhoff <JImhoff@wardfirm.com> wrote:

> Great thank you. Sandy was going to the fence but has been told previously he couldn't go on Garner's property.
>
> **From:** Alex Timmons [mailto:jatimmons@wjlaw.net]
> **Sent:** Friday, February 01, 2019 9:56 AM
> **To:** Jason Imhoff
> **Subject:** RE: William A. Morgan vs. Paul T. Garner et al.:
>
> I texted Garner so I will let you know you know if I hear anything back. I told him in the text that Sandy may come over to talk to the Summit guy.

<image002.png>

J. Alex Timmons, Attorney
jatimmons@wjlaw.net
872 S. Pleasantburg Drive
Greenville, South Carolina 29607
Phone: (864) 908-3814
Fax: (864) 241-5372
wjcblaw.com

From: Jason Imhoff [mailto:JImhoff@wardfirm.com]
Sent: Friday, February 1, 2019 9:44 AM
To: Alex Timmons <jatimmons@wjlaw.net>
Subject: RE: William A. Morgan vs. Paul T. Garner et al.:

Sandy is hot. Can Sandy please go talk to them on Garner's property? He feels excluded.

From: Alex Timmons [mailto:jatimmons@wjlaw.net]
Sent: Friday, February 01, 2019 8:20 AM
To: Jason Imhoff
Subject: RE: William A. Morgan vs. Paul T. Garner et al.:

Jason,

I wanted to let you know that Summit was coming out to Garner's house this morning to start work.

They are going to forward him the invoice and he is going to get it to me and I will forward it along to you.

Thanks,
Alex

<image002.png>

J. Alex Timmons, Attorney
jatimmons@wjlaw.net
872 S. Pleasantburg Drive
Greenville, South Carolina 29607
Phone: (864) 908-3814
Fax: (864) 241-5372
wjcblaw.com

From: Jason Imhoff [mailto:JImhoff@wardfirm.com]
Sent: Thursday, January 31, 2019 8:28 AM
To: Alex Timmons <jatimmons@wjlaw.net>
Subject: RE: William A. Morgan vs. Paul T. Garner et al.:

I sent it to Summit. Summit already has it.

From: Alex Timmons [mailto:jatimmons@wjlaw.net]
Sent: Wednesday, January 30, 2019 6:10 PM
To: Jason Imhoff
Subject: William A. Morgan vs. Paul T. Garner et al.:

Jason,

I could have sworn that you sent me the topographical documents but I cannot locate them anywhere. Can you resend them to me so I can forward them along to Mr. Garner to provide to Summit.

Thank you,
Alex

<image005.png>

J. Alex Timmons, Attorney
jatimmons@wjlaw.net
872 S. Pleasantburg Drive
Greenville, South Carolina 29607
Phone: (864) 908-3814
Fax: (864) 241-5372
wjcblaw.com

From: Jason Imhoff [mailto:JImhoff@wardfirm.com]
Sent: Friday, January 25, 2019 10:20 AM
To: Alex Timmons <jatimmons@wjlaw.net>
Subject: RE: William A. Morgan vs. Paul T. Garner et al. Claim # 0404806069: William A. Morgan vs. Paul T. Garner et al.:

That is correct

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Sent: Friday, January 25, 2019 10:20 AM
To: Jason Imhoff
Subject: William A. Morgan vs. Paul T. Garner et al.:

Jason,

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Thank you and have a good weekend,
Alex

<image002.png>

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872 S. Pleasantburg Drive
Greenville, South Carolina 29607
Phone: (864) 908-3814
Fax: (864) 241-5372
wjcblaw.com

Stephanie Echols

From: Jason Imhoff
Sent: Tuesday, February 26, 2019 2:51 PM
To: Alex Timmons; damonw@rplfirm.com
Cc: Stephanie Echols
Subject: FW: 736 Sterling Dr. - Stormwater

Gentlemen,

I'm not sure if you've seen this yet. I spoke to Clay Helms this morning and Sandy spoke to him yesterday. Essentially, Clay says that he followed Garner's instructions. He did not propose a "fix" to the water issue and does not believe the proposal would fix the water issue. He does not want to be involved in litigation or disagreements between Garner and Mr. Morgan and therefore is bowing out.

As I just discussed with Alex, it is our belief that the settlement put on the record requires a "fix" to the water issue, not just movement of the drain. It is our recollection that an engineer was going to propose a "fix" by moving the drain and Judge Kelly agreed that the final resolution would be determined by the engineer. That clearly is not what happened and Mr. Garner went so far as to bar Mr. Morgan from being on the property when Mr. Helms was present.

We believe Mr. Garner is being vindictive and obstructing the implementation of a reasonable fix to the water issue. He is also presently building a roofed enclosure in his yard while his neighbor is still suffering the effects of the removal of surface water structures by Mr. Garner.

I have been instructed to go forward with the motion to enforce settlement and seek attorney's fees, sanctions, and costs on March 20th. I do not see any other resolution at this point. If we are unsuccessful enforcing settlement we will prepare for trial.

Jason Michael Imhoff
The Ward Law Firm, P.A.
233 S. Pine Street
P.O. Box 5663
Spartanburg, SC 29304

(864) 582-3075

jimhoff@wardfirm.com
CONFIDENTIAL & PRIVILEGED

From: Clay Helms [mailto:chelms@summitengineeringgroup.com]
Sent: Tuesday, February 26, 2019 10:03 AM
To: Paul Garner; Jason Imhoff
Subject: 736 Sterling Dr. - Stormwater

Mr. Garner,

I have decided that it best for my firm to no longer be involved with stormwater issue involving your and your neighbor's property.

It seems that there may still be some unresolved issues (between the 2 parties) on how the stormwater issue should be resolved.

I do not want to be involved with this any further.

Clay M. Helms, P.E.
Principal
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9601 Warren H. Abernathy Hwy
Spartanburg, SC 29301
Phone: (864) 949-1111
Fax: (864) 949-1110
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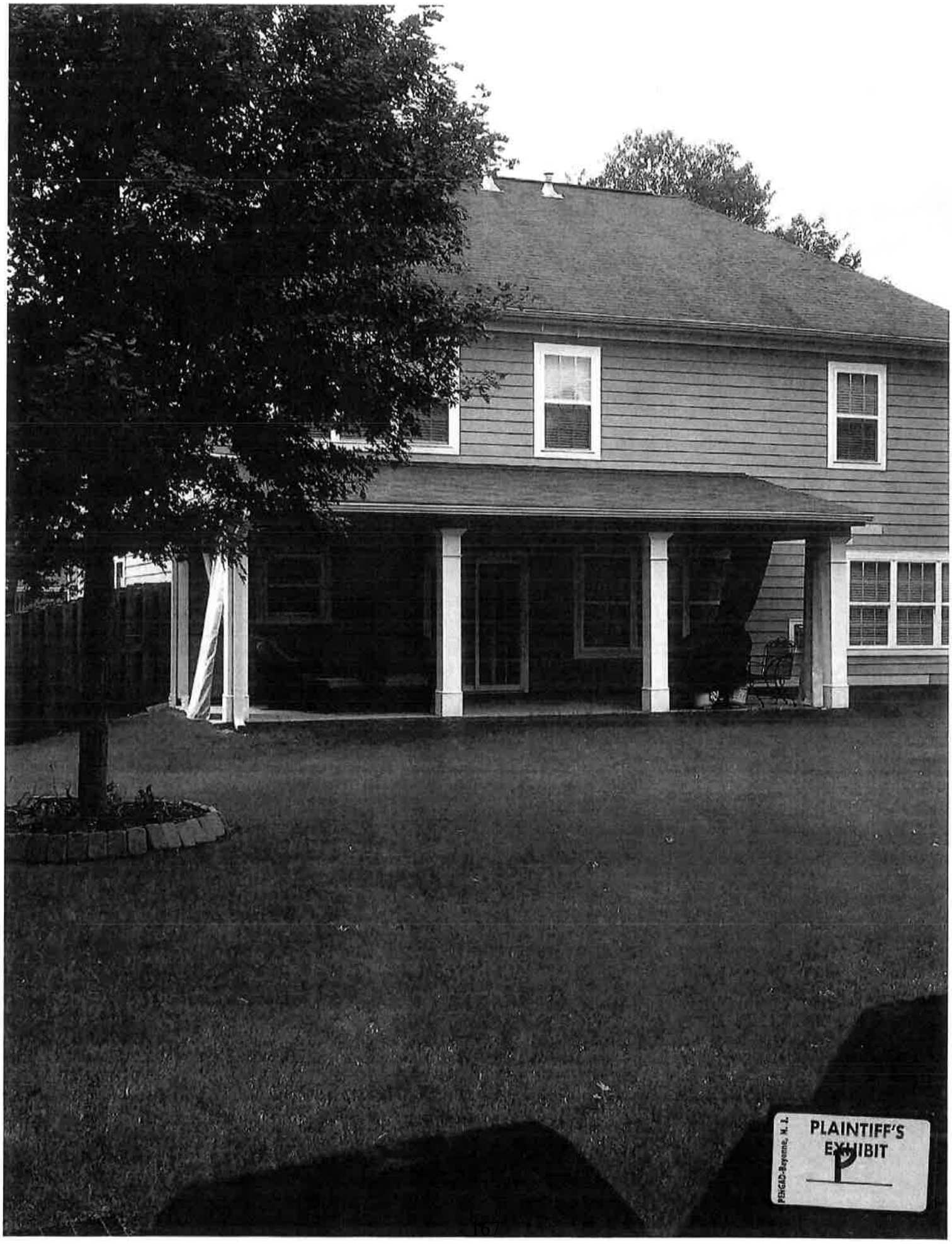
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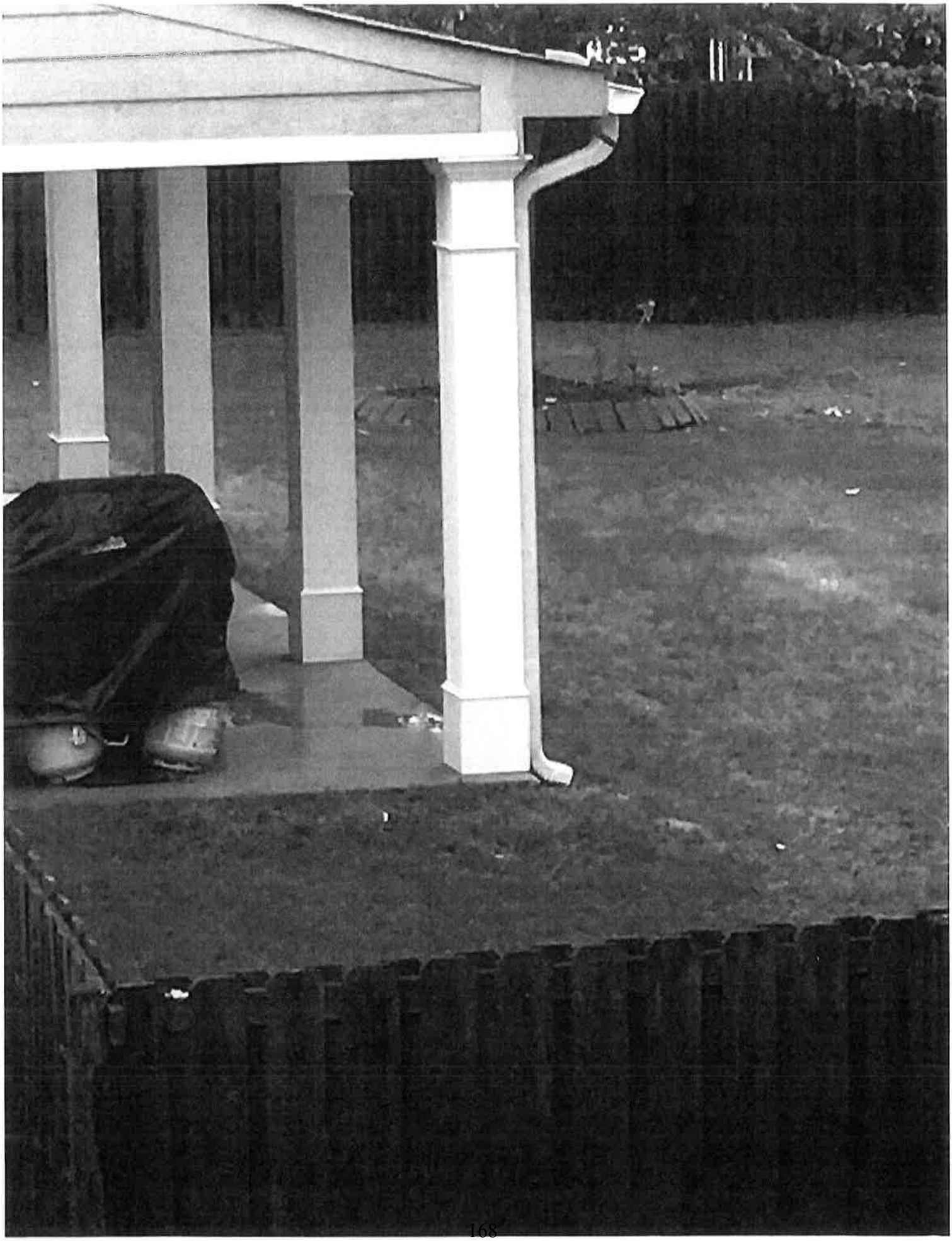

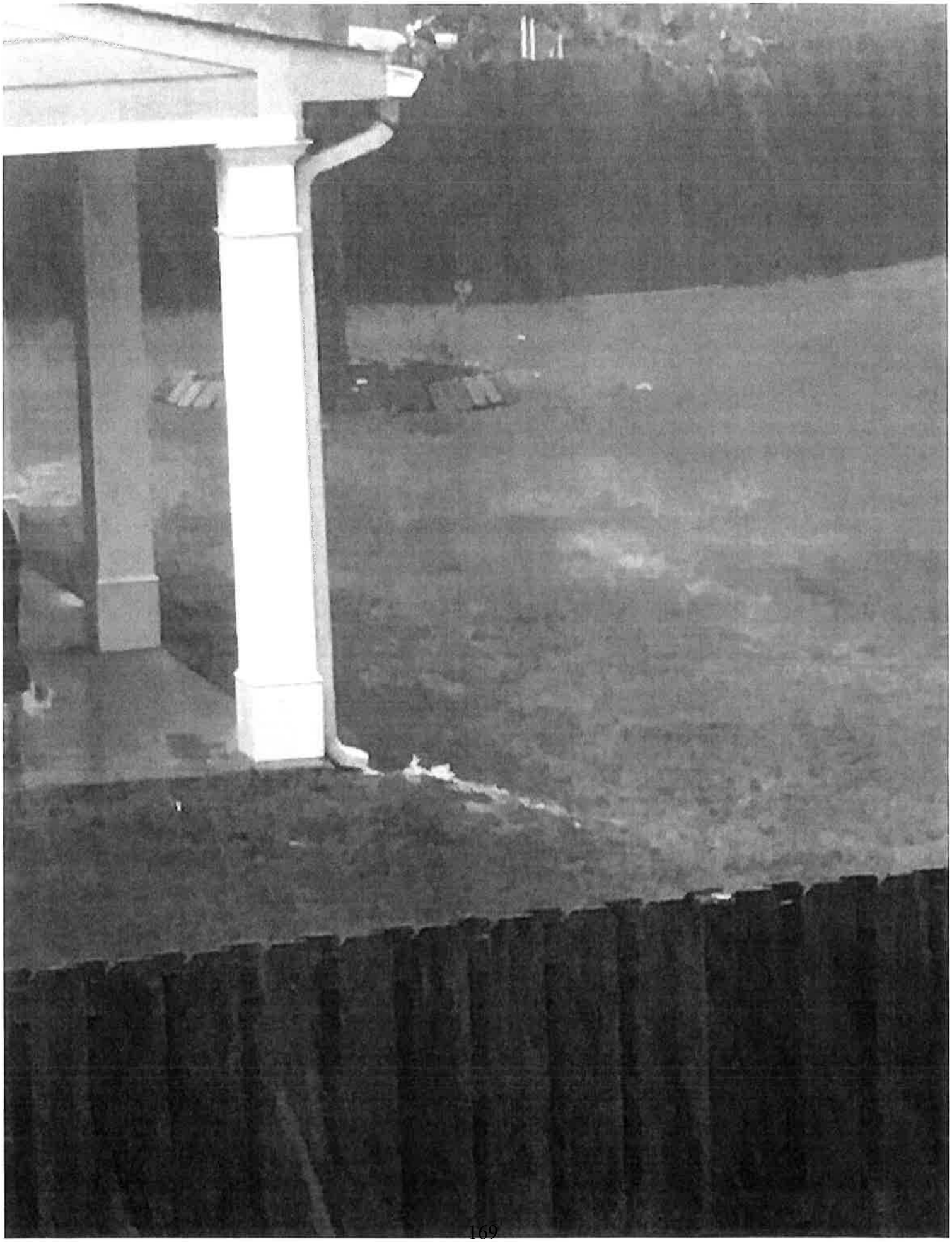

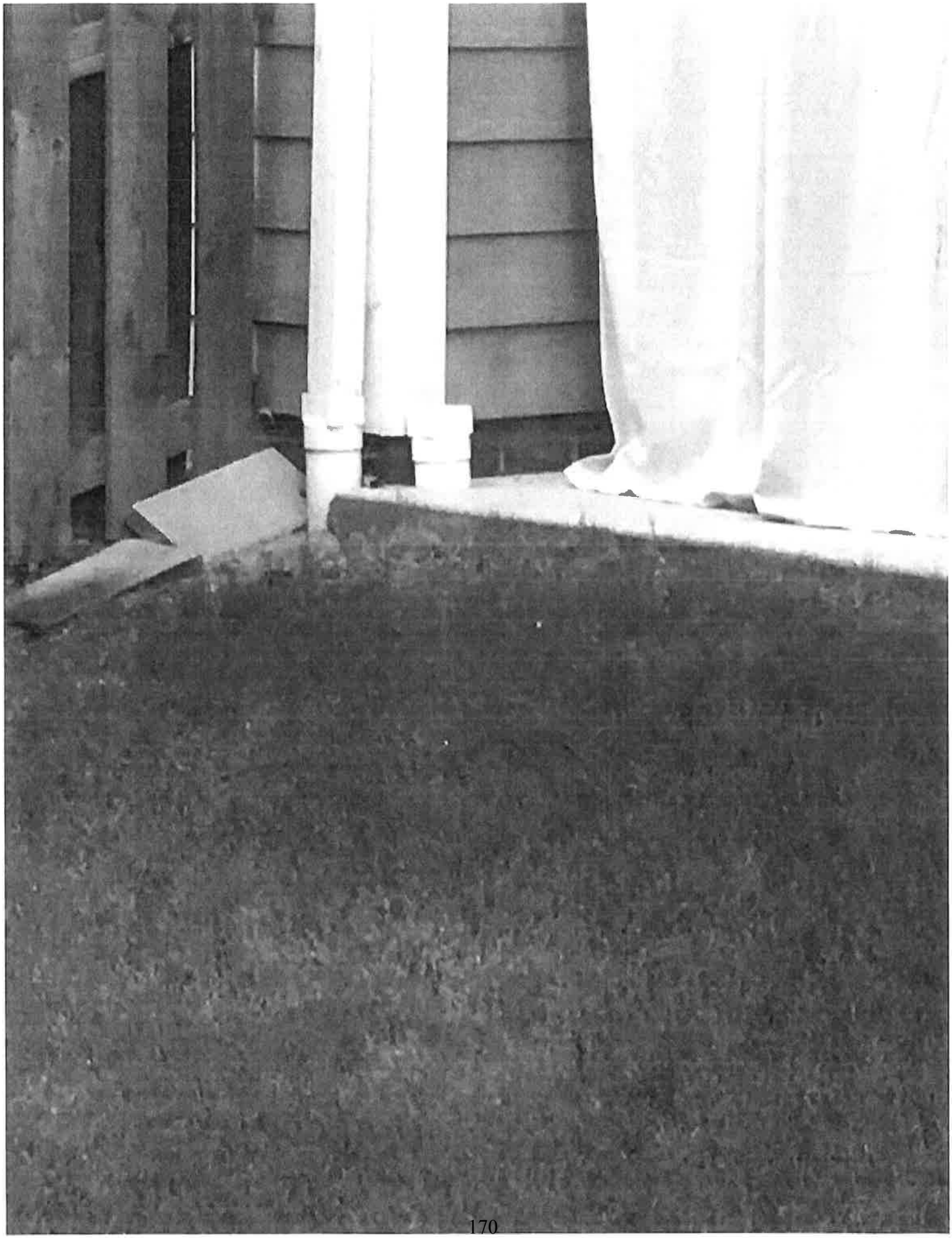

STATE OF SOUTH CAROLINA COUNTY OF SPARTANBURG William A. Morgan, Plaintiff, vs. Sterling Estates Homeowner's Association, Inc., and Paul Thomas Garner, Defendants.	IN THE COURT OF COMMON PLEAS FOR THE SEVENTH JUDICAL CIRCUIT CASE NO.: 2016-CP-42-00727 **DEFENDANT PAUL GARNER'S MEMORANDUM IN OPPOSITION OF PLAINTIFF'S MOTION TO ENFORCE SETTLEMENT**

This matter is before the Court on Plaintiff's Motion to Enforce Settlement. Defendant Paul Garner (hereinafter "Defendant") submits this memorandum in opposition to Plaintiff's motion.

Facts

This matter arises out of a Complaint filed by Plaintiff on February 17, 2017 in which the Plaintiff alleged that the Defendant modified his yard in such a way as to cause a storm drain which is in the Defendant's back yard to become ineffective and now the Plaintiff was having water run into his back yard causing damage. The Defendant has denied these allegations.

The Plaintiff and Defendant are neighbors in Sterling Estates Subdivision in Boiling Springs, South Carolina. The parties have been neighbors since 2009 when the Defendant and his wife moved into their house.

Since the very beginning of this matter the Defendant has vehemently denied doing anything that changed the flow of storm water in his back yard. The Defendant has neighbors, who were listed as witnesses in discovery, who confirm that the Defendant has done nothing to change the flow of the water and the flow of the storm water is the same as it has always been

before and after any work done in the Defendant's back yard.

On October 1, 2018 the subject matter was up for trial in Spartanburg in front of the Honorable R. Keith Kelly. Prior to the beginning of the trial the parties were able reach an agreement in which the general terms of the agreement were put on the record. (Defendant's Exhibit A, Transcript).

Standard of Review

"In South Carolina jurisprudence, settlement agreements are viewed as contracts." Pee Dee Stores, Inc. v. Doyle, 381 S.C. 234, 241, 672 S.E.2d 799, 802 (Ct. App. 2009). "An action to construe a contract is an action at law." Byrd v. Livingston, 398 S.C. 237, 241, 727 S.E.2d 620, 622 (Ct. App. 2012).

Arguments

The Plaintiff has alleged that the Defendant is trying to act outside of what was agreed to and is being obstructive and delay the process.

South Carolina law clearly holds that settlement agreements are viewed as contracts and therefore contract principles of law should be used to determine what the parties intended. Ecclesiastes Prod. Ministries v. Outparcel Assocs., LLC, 374 S.C. 483, 497, 649 S.E.2d 494, 501, (2007). In construing a contract, the primary objective is to ascertain and give effect to the intention of the parties. Southern Atl. Fin. Servs., Inc. v. Middleton, 349 S.C. 77, 80-81, 562 S.E.2d 482, 484-85 (Ct. App. 2002). South Carolina common law requires that, in order to have a valid and enforceable contract, there must be a meeting of the minds between the parties with regard to all essential and material terms of the agreement. Patricia Grand Hotel, LLC v. MacGuire Enters., 372 S.C. 634, 638, 643 S.E.2d 692, 694, (2007). When contract language is not clear it is a matter of law for the court to determine whether the language is ambiguous.

South Carolina Dep't of Natural Resources v. Town of McClellanville, 345 S.C. 617, 550 S.E.2d 299 (2001). A contract is ambiguous when it is capable of more than one meaning or when its meaning is unclear. Ellie, Inc. v. Miccichi, 358 S.C. 78, 94, 594 S.E.2d 485, 493. ([A]n ambiguous contract is one capable of being understood in more senses than one, an agreement obscure in meaning, through indefiniteness of expression, or having a double meaning." Carolina Ceramics, Inc. v. Carolina Pipeline Co., 251 S.C. 151, 155-56, 161 S.E.2d 179, 181 (1968)). Once it is determined that the language is ambiguous evidence may be admitted to show the intent of the parties. S.C. Dep't of Natural Res. v. Town of McClellanville, 345 S.C. 617, 623, 550 S.E.2d 299, 303, (2001). The Fourth Circuit Court of Appeals addressed a similar matter in which there was a dispute and an outline of the agreement was made part of the record. Ozyagcilar v. Davis, 701 F.2d 306, 307, (1983 U.S. App). The Appellate Court noted that the district court only retains the power to enforce complete settlement agreements; it does not have the power to impose, in the role of a final arbiter, a settlement agreement where there was never a meeting of the parties' minds. Ozyagcilar, 701 F.2d at 308. Where there has been no meeting of the minds sufficient to form a complete settlement agreement, any partial performance of the settlement agreement must be rescinded and the case restored to the docket for trial. Id. What we have in this matter is a settlement agreement in which there was never a meeting of the minds or with ambiguous terms because only the general overview of the settlement was placed on the record. The law clearly holds that there must be a meeting of the minds on all the essential and material terms of the agreement for there to be a valid agreement.

The agreement that was placed on the record on October 1, 2018 were the general terms of the settlement and did not contain all the essential and material terms. It has been attempted for the parties to create a written settlement agreement but Plaintiff has refused to sign a written

settlement agreement until certain other things are completed. The general terms of the agreement placed on the record were that the Defendant would pay $11,000.00 and Defendant Sterling Estates would pay $6,000.00. Furthermore, the parties put the general terms that they would work together to move the subject stormwater grate ten (10) feet over so that it collected the water. The grate was simply going to be moved ten (10) feet down the pipe and Plaintiff's counsel indicated "so it should be a fairly easy thing to do." (Transcript, 4:24-25) The parties agreed that they would hire a mutually agreeable contractor. The Defendant wanted some control of this matter because anything being done would be done in his yard. At the time a contractor, Site Design, was put on the record as a potential firm to do some if not all of the work. It is clear from the record that the parties did not agree at that time for Site Design to do the work.

Furthermore, as is clear from the record, there was still a dispute as to how the work was to be completed which is an essential and material term:

> Mr. Imhoff:
>
> The only thing that I would add, which might – which Mr. Timmons tells me may be in a little bit of dispute is I don't know how that's going to be done... (5:15-17)

Mr. Imhoff went on to suggest his thoughts as to how the work should be completed:

> ...what I would suggest is that Mr. Morgan and Mr. Garner rely on the engineer or the contractor that does it to make it as effective as possible, Your Honor. (5:20-23)

The Defendant did not agree that the engineers or contractors could do whatever was necessary to make the stormwater drain as effective as it can be or "fix" the problem as Plaintiff is now saying.

> Mr. Timmons:
>
> Mr. Garner does not want them to come in and do his yard. As you can see, it's sort of flat right there. We understand that they may to drop it down a little bit in order for the water to go in it, but he does not want – so long as that can be part of it, is that they are not going to re-grade his whole yard.

We under stand there may be some right around the grate that has to be done, but we don't -- right now it's – as you can see, it's relatively flat in the area where it is going to have to be moved, and so we would like it to stay as flat as possible right there. (5:25-6:10)

One last thing. I would say once this grate drain is moved, outside of some catastrophic coming in and doing something crazy in the yard, that this forever ends any type of water issue, because we have all agreed to move it to this point. So if there is some water that bypasses it somehow, outside of some type of – outside of normal usage of the yard, that this is forever and we can't come back here for any type of other suit.

Mr. Imhoff:

Yeah, we would agree to that. (7:8-16)

The Defendant considered the fact that by just moving the stormwater grate it may not stop all the water or "fix" the problem and water may still flow into the Plaintiff's yard.

The Defendant did not want grading to be done in his yard as part of the moving of the stormwater grate. Plaintiff's counsel agreed on the record that it was not their intention to re-grade the Defendant's yard.

Mr. Imhoff:

But it's not our intention to re-grade his yard at all.. (6:21-22) (Italics added for emphasis)

It is clear that what was put on the record were not the complete details of the settlement but was just a general overview of what was going to be done and the there was a never a clear meeting of the minds on all the essential and material terms. The problem that has now arisen is that the parties are not agreeing on the extent of the work that is supposed to be done which is an essential and material term. There is a dispute as to what was meant by what was put on the record which clearly indicates there was not a meeting of the minds of the parties. What we do

know from the record is that the parties were going to work together to hire the people needed to move the grate. That has never been the issue. Where this has fallen apart is in the details of what was to be done. Plaintiff's are saying that the Defendant agreed to move the grate and do what was needed to "fix" the problem. The Defendant has held to the position that the only thing ever agreed to was moving the grate but no re-grading of the Defendant's yard. It is clear that there was never a meeting of the minds on the essential and material terms.

If the court determines that there is ambiguity in the agreement then the Court should look to other evidence as to intent. S.C. Dep't of Natural Res. v. Town of McClellanville, 345 S.C. 617, 623, 550 S.E.2d 299, 303, (2001). It is clear from subsequent actions that the Defendant never intended to have his yard regraded and all he intended was to move the grate. At the approval of Plaintiff, the Defendant hired Clay Helms of Summit Engineering Group, Inc. to perform the site design for the desired work. Mr. Helms subsequent to doing his work backed out of the project because there was a disagreement as to what each side said was to be completed. (Defendant's Exhibit B - Email from Mr. Helms to Defendant. "From our conversations all I thought was needed was to show the new catch basin in the low area of the yard and that no 'berm' or grading was to be done. This is not what I have been told by the other parties.") Further evidenced by Plaintiff's Exhibit "O" which included an email from Mr. Helms stating, "It seems that there may still be some unresolved issues (between the 2 parties) on how the stormwater issue should be resolved." It is clear from these emails that there was never a meeting of the minds on all essential and material terms. If the court determines that it was ambiguous it is clear from looking at other evidence that the essential and material terms were never agreed upon.

The Plaintiff is alleging that the Defendant has been obstructive and has purposefully

delayed the settlement of this matter. The Defendant has not been obstructive and has not purposefully delayed this matter and the timeline will show the same. Plaintiff has alleged by their timeline but that does not show the entire story unless you look at all the details and non-written communication.

This matter was put on the record on October 1, 2018. At the hearing the Plaintiff discussed the use of Site Design, but it was never officially agreed to by the Defendant on the date of the hearing. On October 4, 2018 Plaintiff's counsel forwarded Defense counsel an email communication from Site Design. It appeared from the email which is Plaintiff's Exhibit C was an email from Site Design to Plaintiff's counsel asking if they needed to set up a proposal but said nothing about needing to go onto the Defendant's property ("Would you like me to go ahead and set up the proposal as well?" – Site Design email October 4, 2018). The email forwarded to Defense counsel included the email from Site Design as well as Plaintiff's counsel's response to the email. Plaintiff's counsel indicated who the proposal would need to be made out to but again there was nothing regarding needing to come onto the Defendant's property.

Following the October 4, 2018 communication there was no further communication to the Defense regarding Site Design until Plaintiff's communication on October 23, 2018 when they requested access to Defendant's property 2 days later. The Defendant was out of the country at the time and because of the agreement to work together the Defendant was not willing to allow anyone on his property without him there. The Defendant furthermore wanted to have the opportunity to talk to whomever was going to come to the property so he could be a part of the decision. Plaintiff and his counsel were not happy with the Defendant at that time as set forth in their October 24, 2018 email from Plaintiff's counsel to Defense counsel, "Absolutely ridiculous" (Plaintiff's Exhibit E). The Defendant did not take this position to delay or be

obstructive but did so because it is his property and he did not want anyone he did not know on his property when he was not there. Furthermore, it was his right to be there because he was supposed to be part of the decision making.

On October 30, 2018, Plaintiff circulated an email stating that they would let us know when Site Design could potentially go to Defendant's property. They further stated that Defendant may want to talk to Site Design but he may want to wait to talk to them. (Plaintiff's Exhibit F).

Site Design contacted Plaintiff's counsel on November 14 indicating that they would like to visit the Defendant's property the following week. On November 16, Defendant contacted Site Design to discuss this matter with them and their involvement in the matter as suggested by Plaintiff's counsel's November 16 email (Plaintiff's Exhibit G - Plf 11/16 email – "If Mr. Garner would like to speak to Mr. Jones or anyone else at Site Design before giving approval we would ask that he do so... Otherwise we need dates next week or I've been asked to file a motion and seek attorney's fees.") Site Design was not able to contact the Defendant until the following week on November 19 (This is confirmed by email included in Plaintiff's Memorandum from Site Design to Plaintiff dated 11/19/2018.). The Defendant, based on his conversation with Site Design, informed them that they were not allowed on his property because he was not happy that Plaintiff had hired them without his approval and that they had been involved in a lot of prior litigation. It was the Defense's understanding that we were only waiting on a proposal from them and that they had not been hired for actual work on the project. At that time, Plaintiff instead of trying to work through this went ahead and filed their Motion to Enforce on November 20, 2018, less than two (2) months after the on the record settlement summary, which caused more issues.

On October 16, 2018 the initial draft of the proposed written Settlement Agreement/

Release was sent to all counsel by counsel for Defendant Sterling Estates. Plaintiff did not suggest any revisions or willingness to execute the initial settlement document prior to filing their Motion to Enforce. In fact in their Motion they stated in paragraph 5 that Defendant's counsel had never drafted a Release pursuant to the on the record settlement agreement. At the time there was an initial draft that neither Plaintiff or Defendant's counsel had either suggested revisions or agreed to execute. Furthermore, there was nothing in the on the record agreement that Defendant's counsel was to draft any Release. On November 27, 2018 counsel for Defendant forwarded a revised Release/Settlement Agreement to the counsel for the other parties with their revisions in hopes that would help push this matter forward so we would have something in writing and move the matter along to resolution. (Defendant's Exhibit C). This was sent the Tuesday after Thanksgiving a week after the Plaintiff filed his Motion to Enforce on the Tuesday before Thanksgiving. Plaintiff indicated that they needed the Release so the Release with Defendant's revisions was provided to them right away. Plaintiff's counsel and Defendant's counsel spoke on December 6 regarding this matter and how to best move forward. At that time they informed us that they would not sign the proposed Release/Settlement Agreement but offered no revisions. (Plaintiff's Exhibit I notes in an email that whey would not sign the proposed Release.) They believed that the Release document was a way for the Defendant to delay and prevent repair but in reality it was the Defense trying to get a more detailed settlement agreement signed by the parties so that everyone would be clear on each parties rights and duties in this matter.

During the conversation with Plaintiff's counsel on December 6 the parties discussed that Mr. Garner was not comfortable with Site Design because of the amount of litigation they had been in over the years and he would prefer a company that did not have such a history. Plaintiff's

email dated December 6 (included in Plaintiff's Exhibit H) directed Mr. Garner to hire and direct any engineer to do the project as long as they agreed. At that time Mr. Garner had already found 3 potential other options for the work but because of Site Design already having some involvement counsel for Defendant had discussions with Mr. Garner to see if he would change his mind on whether to not move forward with Site Design. We were already into December at this time. Counsel for Defendant had a very busy December with a multi-day trial and then Christmas and almost 2 weeks off with protection because his wife was out of the country and he had to take care of his kids while they were out on Christmas break. So through no fault of anyone other than counsel for Defendant having a busy schedule not much was completed during December 2018.

On January 4, 2019, counsel for Defendant followed up with Plaintiff's counsel regarding the status of the Release. At this time we were hoping for some revisions but all they had indicated that they would not sign the Release. (Part of Plaintiff Exhibit J). At that time their response was that the only option was to add an engineering and construction proposal to the Release. They indicated at that time for Mr. Garner to get a proposal and attach it to the Release. As is indicated by Plaintiff's Exhibit J, counsel for the parties discussed this matter via telephone and Plaintiff's counsel welcomed Mr. Garner to contact the companies that Mr. Garner had previously found and get proposals from them.

Because Plaintiff stated that they needed a proposal to attach to the Release for a completed Release, Mr. Garner began working on getting proposals from the 3 companies over the next few weeks. As evidenced by Plaintiff's Exhibit K, on January 23, 2019 the Defendant presented to Plaintiff the results of contacting the 3 companies. Defendant presented to the Plaintiff that one of the companies never returned his communication and provided a cost

estimate from another company with their start availability. The 3rd company, Summit Engineering, had come to the Defendant's home and had provided a proposal letter which was forwarded along to al counsel. Summit provided in their proposal the services that they could provide and the cost of those services. This was more than was ever received by the Defendant regarding Site Design, a company which never provided a proposal that the Defense is aware. Mr. Garner also during that time contacted DHEC to determine if the drain was part of the county storm water system and began researching potential companies who could actually complete the work after the design work was completed by an engineering firm. None of this further work was presented to Plaintiff because we never made it to that point in the matter.

On Friday, January 25, 2019 as evidenced by Plaintiff's Exhibit M, the Plaintiff agreed to Summit Engineering. The next week, January 31, 2019, Defendant contacted Summit to come begin the work. This was just prior to the first time that the Plaintiff's Motion to Enforce was up for a hearing. Because of the progress, the parties decided to continue the Motion. As is evident from the time line and contrary to Plaintiff's allegations, work was being done well before the eve of the hearing and it just happed that everything fell into place the week of the hearing. This was not a case of being obstructive and delaying as the Plaintiff has alleged.

On January 31, 2019, Clay Helms from Summit Engineering contacted Defendant regarding how he would be paid and his hope that he would potentially be able to complete the work the next day. (Defendant's Exhibit D). After 5:00 p.m. on January 31, 2019, Mr. Helms let Defendant know that he could come the next day as evidenced by the Defendant's Exhibit D. As you can see Defendant's counsel did not respond until the following morning around 8:20 a.m. This was the same time that Defendant's counsel informed Plaintiff's counsel of the visit. (In review of Defense counsel's calendar he had a family event on January 31 in the afternoon and

evening and that is why it was first thing the next morning before notice was given to Plaintiff's counsel.) Plaintiff's counsel contacted Defense counsel at approximately 9:44 a.m. to indicate that Plaintiff was mad and wanted to go onto the property of the Defendant to talk to Mr. Helms of Summit Engineering. (Plaintiff Exhibit N). Plaintiff felt excluded but the Defendant was moving along trying to get the proposal that was needed so that a written agreement could be completed. The reason the Defendant refused to allow the Plaintiff onto his property was because the Defendant had already left for work and was not present. It was suggested to Plaintiff that he ask Mr. Helms to step to the other side of the fence to discuss this matter. Defendant is not aware if Plaintiff talked to Mr. Helms that day or not.

Subsequent to Mr. Helms coming to the property to complete a site design, he discussed the matter with Plaintiff and Plaintiff's counsel and decided to withdraw from the matter. Based on an email from Mr. Helms to Defendant dated February 26, 2019 (the day he spoke to Plaintiff's counsel and the day after he talked to Plaintiff), he informed the Defendant that there were still unresolved issues on how the storm water issue should be resolved. (Plaintiff's Exhibit O). Further email communication on the same date between Mr. Helms and the Defendant indicated what the Defendant had instructed Mr. Helms of the scope of the work based on the Defense's agreement to move the drain but not re-grade the yard. (Defendant's Exhibit B). It is clear from the emails from Mr. Helms that the parties were not in agreement and there had never been a meeting of the minds on the scope of work to be performed which is an essential and material term.

Plaintiff indicated in their email dated February 26, 2019, after their conversation with Mr. Helms that the movement of the drain would not "fix" the problem. They further indicated that they believed the original statements put on the record called for a "fix" of the water issues

and that the Defendant was trying to obstruct a reasonable fix to the problem. The Defendant never agreed to a "fix" of the issue but did agree to the movement of the drain without grading. This was a compromise to this matter because the Defendant has held from the beginning that he has never done anything to cause the problems the Plaintiff alleges.

Since the time of the February 26, 2019 email communications no further work has been completed by either party. It is clear from the record that the Defendant has not attempted to be obstructive or delay this matter. As of February 26 the parties were at that time waiting for the Motion hearing to come up on March 20. Unfortunately, when March 20, 2019 came around, Defendant's counsel had to request a continuance because of a family sickness. The matter was not put back on the court roster to be heard until August 16, 2019. The Plaintiff's claims of the Defendant being obstructive or delaying the matter on purpose are baseless and are not supported by the facts.

CONCLUSION

Contract law clearly states if there is not a meeting of the minds on all the essential and material terms then there is no valid contract. In this matter it is clear that there was never a meeting of the minds on all the essential and material terms of the agreement. Unlike a lot of settlement agreements the money that was agreed to exchange hands in this matter was a minor term of the agreement. The essential and material terms of this agreement were what was to be done and how it was to be completed. The Defendant has held the same position throughout this entire matter they he never did anything to cause the problem that the Plaintiff was alleging in his Complaint. For the Defendant to agree to anything it is a compromise in order to try to reach a resolution. He compromised and agreed to move the storm drain but did not agree to grading of his property or a "fix" as would be proposed by an engineer. As is clearly evident from the

evidence there was never a meeting of the minds on all the essential and material terms.

Furthermore, the claim of intentional delay and being obstructive is not founded in the actual facts of what has occurred in this matter since October 1, 2018. As is seen from the timeline set forth above in more detail than Plaintiff laid out there was never any intention of purposeful delay or being obstructive. The Defendant has never intended to delay or be obstructive but has always wanted to protect his rights in this matter and has wanted those rights and duties in a written agreement to which has never happened.

In the end the parties clearly have not come to an agreement because there has never been a meeting of the minds on all the essential and material terms as based on the record of events. Therefore, this matter should be returned to the docket for trial.

WILLSON JONES CARTER & BAXLEY, P.A.

s/ J. Alex Timmons

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Attorney for Defendant Paul Garner

Greenville, South Carolina

August 20, 2019

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF SPARTANBURG)	CA#: 2016-CP-42-0727
)	
William A. Morgan,)	
)	
Plaintiff,)	
)	**PLAINTIFF WILLIAM A. MORGAN'S MEMORANDUM IN OPPOSITION TO DEFENDANT PAUL GARNER'S MOTION TO RECONSIDER**
v.)	
)	
Sterling Estates Homeowner's Association, Inc. and Paul Thomas Garner,)	
)	
Defendants.)	
)	

Plaintiff, William A. Morgan, presents this memorandum in opposition to Defendant Paul Garners motion to reconsider. This motion is based upon the settlement agreement put on the record on October 1, 2018, this Court's Order of September 6, 2019, and additional law and arguments made by counsel. The Plaintiff agrees with the Court's September 6, 2019 Order in that it found unnecessary wrongdoing, delay, and obfuscation of the agreement made between all parties in front of the Hon. Judge Kelly on October 1, 2018.

PROCEDURAL BACKGROUND

This case was originally filed on February 17, 2016 alleging negligence, trespass, nuisance, and other causes of action related to stormwater runoff from Defendant's property onto Plaintiff's property. Plaintiff alleges that Defendant removed storm water diversion devices, regraded his yard, and directed the flow of substantial storm water into a channel directly onto Plaintiff's property causing substantial and continuing damages. The case was set for trial on October 1, 2018 and with the assistance of Hon. Judge Keith Kelly the parties reached an agreement. That agreement was put on the record in front of the Judge on October 1, 2018.

(Exhibit A, Transcript of Settlement Agreement). After several months of noncompliance and no response from Defendant to comply with the terms of the settlement agreement put on the record, Plaintiff filed a motion to enforce the settlement on November 20, 2018. That motion to enforce the settlement was put off by Defendant numerous times and ultimately was not heard until August 16, 2019. During the hearing, evidence was presented that the Defendant Paul Thomas Garner and counsel purposefully and intentionally delayed implementation of the most basic terms of the settlement agreement. Specifically, Defendant refused the hiring of a licensed, certified, and well-regarded engineering firm in Greenville. Thereafter, evidence was presented that Defendant refused to provide an alternative engineer to perform the work until the motion to enforce a settlement was filed and the hearing was scheduled. Thereafter, Plaintiff hired Clay Helms of Summit Engineering, who was immediately approved by Plaintiff. Thereafter, Plaintiff introduced evidence that Plaintiff was not allowed access to Mr. Helms or to Defendant's property to discuss the repair with Mr. Helms. Instead, Mr. Helms, a licensed engineer, was directed to perform a repair arbitrarily created by Defendant in direct contravention of the settlement agreement. Evidence was provided that Mr. Helms did not create the repair or do any surveying or engineering analysis to analyze the effectiveness of that repair, again in contravention of the settlement agreement.

Defendant argues that the settlement agreement is a contract and there was no mutual understanding or meeting of the minds. Defendant's arguments are once again incorrect and an attempt to delay and void the settlement agreement entered into.

The settlement agreement put on the record was clear in its terms as follows:

> 1. Plaintiff and Defendant were to work together to obtain an engineer.
>
> The evidence is clear that Defendant not only refused a licensed, certified, and well-regarded engineer – but also refused to provide an

> alternative for an unreasonable amount of time until a motion was filed and a hearing scheduled. Thereafter, the evidence is clear that Defendant would not allow Plaintiff access to that engineer or onto his property to discuss the scope of that engineer's work in compliance with the settlement agreement.
>
> 2. Both parties agreed to allow the engineer to provide a scope of repair and "rely on the engineer or contractor that does it to make it as effective as possible…" (See transcript of proceedings, page 5, lines 17-23).
>
> 3. Both parties and Judge Kelly envisioned using the engineer's report to conduct the repair.

(Exhibit A, Transcript of proceeding)

Plaintiff has not allowed any engineer to produce an engineering analysis and scope of repair based upon resolving the water issue. Although Defendant ultimately retained Clay Helms, it is clear from Clay Helms' emails that Defendant created the scope of repair, not the licensed engineer.

Additionally, Defendant's counsel put on the record that:

> 5. "Mr. Garner does not want them to come in and do his yard. As you can see, it's sort of flat right there. We understand that it may have to drop down a little bit more for the water to go in it, but he does not want – – just so long as that can be part of it, is that they are not going to regrade his whole yard. We understand there may be some right around the great that has to be done, but we don't – – right now, it's – – as you can see, it's relatively flat in the area where it's going to have to be moved, and so we would like it to stay as flat as possible right there. (Exhibit B, Transcript of proceeding, page 5, line 25; page 6, lines 1–10) (emphasis added).

In response to Defendant's counsel's statement, Hon. R Keith Kelly stated, "I think only engineering can tell you that. I'm not an engineer." (Exhibit A, Transcript of proceeding, line 6, lines 19–20). Neither Defendant, nor his counsel, objected to Judge Kelly's statement that an engineer would need to determine what needed to be done. In fact, Defendant's counsel admitted

that there may be some grading and other work that needed to be done to make the drain effective.

Defendant clearly has not complied with the agreement put on the record by himself and his defense counsel that they would allow an engineer to come up with an engineering resolution to this issue. Instead, Defendant's counsel stated to the Court, “I would say once this grate drain is moved, outside of some catastrophic coming in and doing something crazy in the yard, that this forever ends any type of water issue, because we have all agreed to move it to this point…” (Exhibit A, Transcript of proceeding, page 7, lines 8-12).

In that statement, defense counsel admitted that the only impediment to consummating the settlement agreement would be “some catastrophic coming in and doing something crazy in the yard.” There is no evidence that an engineer has been allowed to provide a scope of repair which would minimally affect Defendant's property, and certainly no evidence that anything “catastrophic” or “crazy” would have been done or suggested by an engineer.

The Court is correct that Defendant and Plaintiff should “jointly hire a contractor and engineer to determine the scope and manner in which the work was to be performed so that it effectively controlled most, if not all water.” (Exhibit B, Hon. Grace Knie Order dated September 6, 2019). Defendants do not dispute that those were the terms of the agreement. Plaintiff and Defendant were to hire an engineer jointly and the engineer was to determine the scope or the manner in which the work was to be performed. There is no failure of meeting of the minds understanding the simple agreement as alleged by Defendant.

As stated by Defendant's own counsel, “For the agreement to be considered a contract, the parties must have intended to enter into a contract and must have reached a mutual understanding of the terms of that contract. This sometimes is called a meeting of minds. The

parties must intend to be mutually bound by the agreement." Stanley Smith and Sons v. Limestone College, 283 SC 430, 322 SE2nd 474 (Ct. App. 1984). In construing a contract, the primary objective is ascertaining and giving effect to the intention of the parties. Southern Atl. Fin. Servs., Inc. v. Middleton, 349 SC 77, 80–81, 562 SE2nd 482, 484-85 (Ct. App. 2002). Clearly in this case there was a meeting of the minds and both parties intended to be mutually bound by the agreement. Defendant has not pointed out any circumstance or fact, other than pure speculation, that the parties did not agree to jointly hire an engineer and implement that engineer's scope of repair outside of it being "catastrophic" or "crazy." In fact, Defendant has not complied with even the first part of that agreement which is to allow an engineer to provide a scope of repair. Defendant's arguments are clearly intended to avoid the mutually agreed settlement agreement and not based on the actual facts of implementing that agreement.

Further, Defendant argues repeatedly that there can be no settlement agreement. Despite that, they have not explained how a settlement agreement was put on the record and a case taken off the active trial docket without entering into the settlement agreement. Clearly, all parties present on the morning of trial were in agreement that there was a settlement agreement and the case had been settled. It is only now, over a year later, that Defendant claims there is no settlement agreement and somehow the terms of that settlement agreement, which Defendant attended, are so ambiguous that they cannot be enforced. This is simply incorrect. Clearly, the settlement agreement is not ambiguous, is straightforward, and can be easily implemented but for the Defendant's refusal to allow the most basic elements of that settlement agreement to proceed. Therefore, the Court was correct in enforcing the settlement agreement, as is the Court's discretion to do, and finding that there was a meeting of the minds, the settlement agreement was not ambiguous, and the settlement agreement should be enforced.

CONCLUSION

For the reasons set forth above, the Court should uphold its September 6, 2019 Order requiring Defendant Garner to comply with the settlement agreement put on the record on October 1, 2018 and allow the implementation of a scope of repair to remedy the storm water issue.

s/ Jason M. Imhoff
Jason M. Imhoff (S.C. Bar #69355)
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P.O. Box 5663
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Telephone (864) 582-3075
Facsimile (864) 585-3090

Attorney for Plaintiff William A. Morgan

October 31, 2019

STATE OF SOUTH CAROLINA)	
)	IN THE COURT OF COMMON PLEAS
COUNTY OF SPARTANBURG)	
WILLIAM MORGAN,)	
)	
PLAINTIFF,)	TRANSCRIPT OF RECORD
)	2016-CP-42-00727
-vs-)	
)	OCTOBER 1, 2018
STERLING ESTATES)	SPARTANBURG, SOUTH CAROLINA
HOMEOWNERS ASSOCIATION,)	
INC., PAUL THOMAS)	
GARNER,)	
)	
DEFENDANTS.)	

B E F O R E:

THE HONORABLE R. KEITH KELLY, JUDGE.

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

JASON IMHOFF, ESQUIRE
ATTORNEY FOR THE PLAINTIFF

J. ALEX TIMMONS, ESQUIRE
ATTORNEY FOR DEFENDANT STERLING ESTATES
HOMEOWNERS ASSOCIATION, INC.

DAMON WLODARCZYK, ESQUIRE
ATTORNEY FOR DEFENDANT PAUL THOMAS GARNER

MICHAEL R. WATTS
CIRCUIT COURT REPORTER

INDEX

EXHIBITS

NO.	DESCRIPTION	ID.	EV.
(NO EXHIBITS MARKED)			

(PROCEEDINGS, OCTOBER 1, 2018).

THE COURT: You have something that you need to put on the record?

MR. IMHOFF: We do, Your Honor.

If it please the court, Your Honor, Jason Imhoff on behalf of Sandy Morgan, plaintiff.

As you are aware, we have settled this case, Your Honor.

The terms of the settlement monetarily aren't necessarily that important, although it's 11,000 from Thomas Garner and 6,000 from the Sterling Estates Homeowners Association.

What is more important and what we needed to put on the record, Your Honor, is that Mr. Garner and Mr. Morgan have to work together, because they've agreed to -- and I could show you a photograph, if you would like, but essentially there is an ineffective --

Mr. Garner, two-foot drain or three --

MR. GARNER: The drain itself is 3 x 3 covered by a 4 X 4 grate.

MR. IMHOFF: Okay. So they are going to move that approximately ten feet over so that it collects the water. Right now it's ineffective where it is. It's going to move just right down the pipe, so it should be a fairly easy thing to do, but we want that on the record.

I think what we have agreed to do is set -- is set aside about $5,000 just as a general estimate and Mr. Garner and Mr. Morgan are going to hire the contractor who is going to do that work so that they both have some degree of control over it. Obviously it's Mr. Garner's yard, so he wants some control over it and also obviously some culpability if things go wrong.

I know, and Mr. Timmons may know, there is a place called Site Design with Andy Sherard in Greenville that's not only engineers, but they also do the work. I don't know how expensive they are, but that's something that I will throw out to these gentlemen, depending on the price of that.

But, anyway, that's the idea.

The only thing that I would add, which might -- which Mr. Timmons tells me may be in a little bit of dispute is I don't know how that's going to be done, what it requires, how high it's going to be, how low it's going to be, whether it needs a little bit of sloping around it to make more -- to make it more effective or not, and what I would suggest is that Mr. Morgan and Mr. Garner rely on the engineer or the contractor that does it to make it as effective as possible, Your Honor.

MR. TIMMONS: In some ways that would be the one part that Mr. Garner does not want them to come in and do

his yard. As you can see, it's sort of flat right there. We understand that they may have to drop it down a little bit in order for the water to go in it, but he does not want -- so as long as that can be part of it, is that they are not going to re-grade his whole yard.

We understand there may be some right around the grate that has to be done, but we don't -- right now, it's -- as you can see, it's relatively flat in the area where it's going to have to be moved, and so we would like it to stay as flat as possible right there.

THE COURT: Sure.

MR. IMHOFF: Yeah, I would say within five feet, or less.

MR. GARNER: I don't want my yard elevated five feet, no.

MR. IMHOFF: No, no, no. No, we are not going to elevate the yard. No, I'm talking about just sloping the yard into the drain when it's moved, within --

THE COURT: I think only engineering can tell you that. I'm not an engineer.

MR. IMHOFF: But it's not our intention to re-grade his yard at all. As a matter of fact, we want to do it as cheaply and as quickly as possible.

THE COURT: Sure.

MR. IMHOFF: One last thing, Your Honor. The

Homeowners Association I think has agreed to cooperate in any way they can. They may need to get with county. I'm not sure, and get some permits or do some approvals or something like that.

THE COURT: Okay.

MR. WLODARCZYK: Very briefly.

I believe whatever manner is possible.

MR. TIMMONS: One last thing. I would say once this grate drain is moved, outside of some catastrophic coming in and doing something crazy in the yard, that this forever ends any type of water issue, because we have all agreed to move it to this point. So if there is some water that bypasses it somehow, outside of some type of -- outside of normal usage of the yard, that this is forever and we can't come back here for any type of other suit.

MR. IMHOFF: Yeah, we would agree to that. It would have to -- Mr. Garner or someone else would have to do something to make that drain ineffective again, which is --

THE COURT: I think the -- I think the case law calls it a common end.

MR. IMHOFF: That's right.

MR. TIMMONS: Yes.

THE COURT: All right. Thank you, gentlemen, so very much. You have worked hard on this. I know, because I was back there listening to you and I appreciate all of you.

I really do.

And gentlemen, congratulations on settling this case.

All right. Anything further?

MR. IMHOFF: Nothing, Your Honor. Thank you very much.

THE COURT: Thank you.

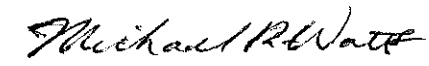
(END OF REQUESTED TRANSCRIPT OF RECORD)

CERTIFICATE

I, the undersigned, Michael R. Watts, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and the evidence introduced in the trial of the captioned case in the Court of Common Pleas for Spartanburg County, South Carolina, on the 1st day of October, 2018.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

May 23, 2019



Michael R. Watts
Circuit Court Reporter

STATE OF SOUTH CAROLINA COUNTY SPARTANBURG	)	IN THE COURT OF COMMON PLEAS SEVENTH JUDICIAL CIRCUIT
William A. Morgan, Plaintiff, v. Sterling Estates Homeowner's Association, Inc., and Paul Thomas Garner, Defendant/s.	)	CIVIL ACTION NO.: 2016-CP-42-00727 Order Regarding Motion to Enforce Settlement

Hearing Date:	August 16th, 2019, at 9:30 a.m.
Hearing Judge:	Grace Gilchrist Knie
Counsel for Plaintiff:	Jason Michael Imhoff
Counsel for Defendant/s:	J. Alex Timmons & Damon C. Wlodarczyk
Court Reporter:	Michael R. Watts

This matter was before the Court on Friday, August 16th, 2019, at 9:30 a.m., in Spartanburg County, SC, the Seventh Judicial Circuit upon Plaintiff's Motion to Enforce Settlement. Attorney Jason Michael Imhoff of The Ward Law Firm, P.A. was present representing the interests of Plaintiff. Attorney J. Alex Timmons of Willson Jones Carter & Baxley, P.A. was present representing the interests of Defendant, Paul Thomas Garner. Attorney Damon C. Wlodarczyk was present and representing the interests of Defendant, Sterling Estates Homeowner's Association, Inc. Michael R. Watts was the Court Reporter.

PROCEDURAL BACKGROUND:

This action was commenced by the filing of a Summons and Complaint dated February 17th, 2016, for the causes of action of negligence, negligence per se, nuisance, and trespass. Defendant Sterling Estates Homeowner's Association, Inc. filed an Answer on March 21st, 2016,

and Defendant Paul Thomas Garner filed an Answer on May 6th, 2016. A Scheduling Order was then ordered by Judge Derham Cole on January 24th, 2017, which required discovery to be concluded by May 30th, 2017, mediation to be held on June 15th, 2017, and trial to occur on or after June 26th, 2017. On June 21st, 2017, Attorney Damon C. Wlodarczyk sent a letter to The Honorable J. Derham Cole and filed a Motion for Continuance indicating that the parties had not yet completed depositions due to attorney conflicts. The letter and motion stated both parties would be prepared for trial by December 4th, 2017. Judge Cole granted the continuance on June 22nd, 2017, allowing the trial to be set not before December 4th, 2017. On September 1st, 2017, Defendant Sterling Estates Homeowner's Association filed a Motion for Summary Judgment. Plaintiff then filed a Motion for Summary Judgment against Defendant Sterling Estates Homeowner's Association on September 22nd, 2017. The Court, Judge Cole denied the Defendant's Motion for Summary Judgment in an Order filed with the Court November 28th, 2017.

The case was then set for the January 16th, 2018, trial docket. On January 9th, 2018, the parties filed a Joint Motion to Continue the case. On January 11th, 2018, The Honorable R. Keith Kelly ordered the case continued to the February 19th, 2018, trial docket. Defendant Paul Thomas Garner filed a continuance request for illness on February 14th, 2018. Judge Kelly granted the continuance on February 15th, 2018. On March 19th, 2018, Attorney Damon C. Wlodarczyk was granted a request for an Order for Protection which was signed by The Court on that date.

On October 1st, 2018, the parties arrived at Court for the trial of the case. Before trial commenced, the parties came to an agreement and informed the trial judge, Judge Kelly that they had settled the case. The parties, through their legal counsel, placed the agreement of the parties on the record before Judge Kelly. On October 2nd, 2018, Judge Kelly signed an Order that

confirmed that the case had been settled. The Plaintiff filed a Motion to Enforce Settlement on November 20th, 2018, requesting that the Court issue an order enforcing the settlement agreement entered into by the parties in this action. The Motion is opposed by Defendant.

FACTUAL BACKGROUND:

This case arises out of significant surface water erosion issues caused by Defendant Garner's removal of storm water direction and capturing devices installed by the developer which caused water to channel directly onto Plaintiff's property in a single stream. The case was set for trial on October 1st, 2018, before Judge Kelly. The case settled on that morning prior to the commencement of trial. The terms of the settlement were put on the record. The terms of the settlement were that Defendant Thomas Garner was to pay $11,000.00 and Defendant Sterling Estates Homeowners Association was to pay $6,000.00. More importantly the parties agreed to jointly retain an engineer and contractor to install or move a storm water drainage drain on Mr. Garner's property to make it more effective. Specifically, the agreement on the record pursuant to the transcript was as follows:

> *The Court: You have something that you need to put on the record? Attorney Imhoff: "As you are aware, we have settled this case,"* (See Transcript of Proceeding, Page 4, Lines 7-8). *Mr. Imhoff continued, "The terms of the settlement monetarily aren't necessarily that important, although it's $11,000 from Thomas Garner and $6,000 from the Sterling Estates Homeowners Association. What is more important and what we needed to put on the record, Your Honor, is that Mr. Garner and Mr. Morgan have to work together, because they've agreed to…They are going to move that [a 3x3 drain covered by a 4x4 grate]… approximately 10 feet over so that it collects the water. Right now it's ineffective where it is. It's going to move just right down the pipe, so it should be a fairly easy thing to do, but we want that on the record.."* (See Transcript of Proceeding, Page 4, Lines 9-25). *In terms of the hiring of a contractor, Mr. Imhoff placed on the record, "I think what we have agreed to do is set -- is set aside about $5,000 just as a general estimate and Mr. Garner and Mr. Morgan are going to hire the contractor who is going to do that work so that they both have some degree of control over it. Obviously it's Mr. Garner's yard, so he wants some control over it and also obviously some culpability if things go wrong...there is a place called Site Design with*

Andy Sherard in Greenville that's not only engineers, but they also do the work." (See Transcript of Proceeding, Page 5, Lines 1-10). *In regards to the actual work to be done, Mr. Imhoff stated, "... I don't know how that's going to be done, what it requires, how high it's going to be, how low it's going to be, but it needs a little bit of sloping around it to make more -- to make it more effective or not, and what I would suggest is that Mr. Morgan and Mr. Garner rely on the engineer or contractor that does it to make it as effective as possible..."* (See Transcript of Proceeding, Page 5, Lines 17-23). *Defense Counsel, Mr. Timmons, placed on the record his only concerns as, "Mr. Garner does not want them to come in and do his yard. As you can see, it's sort of flat right there. We understand they may have to drop down a little bit in order for the water to go in it, but he does not want -- just so long as that can be part of it, is that they are not going to re-grade his whole yard. We understand there may be some right around the grate that has to be done, but we don't -- right now, it's -- as you can see, it's relatively flat in the area where it's going have to be moved, and so we would like it to stay as flat as possible right there.* (See Transcript of Proceeding, Pages 5, Line 25; Page 6, Lines 1-10). *The Hon. R Keith Kelly stated, "I think only engineering can tell you that. I'm not an engineer*." (See Transcript of Proceeding, Page 6, Lines 19-20). *Mr. Imhoff reassured the court, "It's not our intention to re-grade his yard at all. As a matter of fact, we want to do it as cheaply and as quickly as possible"* (See Transcript of Proceeding, Page 6, Lines 21-23). *Near the end of the hearing, Mr. Timmons requested the Court take notice that this agreement would end the litigation between the parties: "I would say once this grate drain is moved, outside of some catastrophic coming in and doing something crazy in the yard, that this forever ends any type of water issue, because we have all agreed to move it to this point..."* (See Transcript of Proceeding, Page 7, Lines 8-12). *Both parties indicated their agreement that this would end the case* (See Transcript of Proceeding Page 7, Lines 21-22). *Judge Keith Kelly thanked the parties for their hard work in settling the case, and he asked if there was "anything further?"* (See Transcript of Proceeding, Page 7, Lines 23-25; Page 8, Lines 1-4).

Based upon terms of the agreement, Mr. Garner and Mr. Morgan were to jointly hire a contractor and engineer to determine the scope and manner in which the work was to be performed so that it effectively controlled most, if not all of the water.

LAW:

South Carolina law establishes that settlement agreements are viewed as contracts; therefore, contract principles of law should be used to determine the parties intentions. *Ecclesiastes Prod. Ministries v. Outparcel Assocs., LLC*, 374 S.C. 483, 497, 649 S.E.2d 494, 501 (2007). Under South Carolina law a contract is an agreement entered into by two or more parties in which each party agrees to perform, or not to perform, certain acts. It may be shown by words, written or oral, or by conduct. However, a contract is more than the mere exchange of promises. For the agreement to be considered a contract, the parties must have intended to enter into a contract and must have reached a mutual understanding of the terms of that contract. This is sometimes called a meeting of the minds. The parties must intend to be mutually bound by the agreement. *Stanley Smith & Sons v. Limestone College*, 283 S.C. 430, 322 S.E.2d 474 (Ct. App. 1984). In construing a contract, the primary objective is to ascertain and give effect to the intention of the parties. *Southern Atl. Fin. Servs., Inc. v. Middleton*, 349 S.C. 77, 80-81, 562 S.E.2d 482, 484-85 (Ct. App. 2002). South Carolina common law requires that, in order to have a valid and enforceable contract, there must be a meeting of the minds between the parties with regard to all essential and material terms of the agreement. *Patricia Grand Hotel, LLC v. MacGuire Enters.*, 372 S.C. 634, 638, 643 S.E.2d 692, 694 (2007). When contract language is not clear it is a matter of law for the court to determine whether the language is ambiguous. *South Carolina Dep't of Natural Resources v. Town of McClellanville*, 345 S.C. 617, 550 S.E.2d 299 (2001). A contract is ambiguous when it is capable of more than one meaning or when its meaning is unclear. *Ellie, Inc. v. Miccichi*, 358 S.C. 78, 94, 594 S.E.2d 485, 493 (Ct. App.2004). "[A]n ambiguous contract is one capable of being understood in more senses than one, an agreement obscure in meaning, through indefiniteness of expression, or having a double

meaning." *Carolina Ceramics, Inc. v. Carolina Pipeline Co.*, 251 S.C. 151, 155-56, 161 S.E.2d 179, 181 (1968)). Once it is determined that the language is ambiguous, evidence may be admitted to show the intent of the parties. *S.C. Dep't of Natural Res. v. Town of McClellanville*, 345 S.C. 617, 623, 550 S.E.2d 299, 303 (2001). The Fourth Circuit Court of Appeals addressed a similar matter in which there was a dispute and an outline of the agreement was made part of the record. *Ozyagcilar v. Davis*, 701 F.2d 306, 307 (1983 U.S. App). The Appellate Court noted that the district court only retains the power to enforce complete settlement agreements; it does not have the power to impose, in the role of a final arbiter, a settlement agreement where there was never a meeting of the parties' minds. *Ozyagcilar*, 701 F.2d at 308. Where there has been no meeting of the minds sufficient to form a complete settlement agreement, any partial performance of the settlement agreement must be rescinded and the case restored to the docket for trial. *Id.*

ARGUMENTS OF COUNSEL:

Plaintiff contends that Plaintiff made numerous, immediate, attempts to carry out the terms of the agreement and that those attempts were thwarted by Defendant. Plaintiff further argues that Plaintiff had no other recourse but to bring this motion to request of the Circuit Court to enforce the Settlement Agreement. Plaintiff requests that the Court grant its motion to enforce settlement and order Defendant Garner to allow access to his property both for preparation of scope of repair and implementation of the scope of repair. Plaintiff further requests attorney's fees, costs, and sanctions against Defendant Garner for his willful obstruction of the settlement agreement. Plaintiff argues that based upon the obvious delay and obstruction by Defendant Garner, that Plaintiff is entitled to the following specific relief: that Defendant Garner be ordered to allow an

engineer of Plaintiff's choosing, Site Design, access to the property to do investigation, inspection, and present a proposed scope of repair; that Defendant Garner be ordered to comply with the scope of repair drafted by Site Design and give any contractor access to his property to implement the scope of repair; that Defendant Garner be ordered to pay attorney's fees, costs, and sanctions for intentionally and willfully obstructing implementation of the settlement agreement; and that the terms of the settlement agreement be enforced.

Defendant Garner, contends that there was no meeting of the minds between the parties. Defendant Garner, asserts the consensus reached between the parties on the record before Judge Kelly did not have a meeting of the minds necessary to form a settlement agreement. Defendant Garner argues that a settlement agreement is considered a valid and enforceable contract, requiring a meeting of the minds regarding all essential and material terms. Here, Defendant Garner asserts there was no meeting of the minds between himself and the Plaintiff. Defendant Garner contends that essential and material terms of the agreement were either ambiguous or not included in the discussion. Specifically, Defendant Garner claims there is still a dispute as to how the work would be completed, which Defendant asserts is an essential and material term. Defendant Garner argues that the lack of discussion regarding how the work would be completed equates to a failure of the minds to meet. It is his position that no enforceable settlement agreement exists because there was no meeting of the minds between the Plaintiff and Defendant Garner, as to the essential terms of the contract.

CONCLUSION:

The Court acknowledges and appreciates the amount of research and preparation for the hearing by counsel, as well as, the professionalism of counsel in their presentations to the Court.

After consideration of the record, the exhibits in evidence, memoranda, arguments of counsel, and the applicable law, as presented to the Court, it is the order of the Court that:

That the Court finds and concludes that the parties to this action reached a meeting of the minds and entered into a binding agreement; and further,

The Court finds that the Plaintiff attempted to honor the terms and conditions of the agreement in full; and further,

That Defendant Garner, is hereby ordered to make every effort to comply with the terms and conditions of the agreement by: allowing an engineer of Plaintiff's choosing access to the property to do an investigation, and an inspection, and present a proposed scope of repair; and by complying with the scope of repair drafted by the engineer; and giving the contractor access to his property to implement the scope of repair; and further

That issue of attorney's fees and costs to be awarded to Plaintiff associated with the bringing of this motion to enforce the settlement agreement shall be held in abeyance pending the extent of Defendant Garner's level of compliance with this Order within the next 30 days on or before October 7th, 2019.

IT IS SO ORDERED.

/s/Grace Gilchrist Knie
Honorable Grace Gilchrist Knie
Resident Judge, Seventh Judicial Circuit

September 7th, 2019
Spartanburg, South Carolina

Spartanburg Common Pleas

Case Caption: William A Morgan VS Sterling Estates Homeowners Association Inc , defendant, et al

Case Number: 2016CP4200727

Type: Order/Other

IT IS SO ORDERED.

S/GRACE GILCHRIST KNIE - 2760

Certificate of Counsel

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

September 30, 2020

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