

IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

DEBORA LIDDELL, BLAKE LIDDELL
And VIRGINIA-HIGHLAND CIVIC
ASSOCIATION, INC.,

Plaintiffs,

v.

JASON KING and CHARLES B. COOK,

Defendants,

v.

OLD REPUBLIC NATIONAL TITLE
INSURANCE COMPANY, JOSEPH
TRACHTENBERG and WENDY
SILVER

Third-Party Defendants.

Civil Action File No. 2016CV279090

ANSWER, AFFIRMATIVE DEFENSES, COUNTERCLAIMS, AND THIRD-PARTY
COMPLAINT OF DEFENDANTS JASON KING AND CHARLES B. COOK

COME NOW, Defendants Jason King and Charles B. Cook (“Defendants”), and hereby file this, their Answer, Affirmative Defenses, Counterclaims, and Third-Party Complaint in response to the *Verified Complaint for Damages and Equitable Relief, Including Preliminary Injunction* (the “Complaint”) filed by Plaintiffs Deborah Liddell, Blake Liddell, and the Virginia-Highland Civic Association, Inc. (“VHCA”), respectfully showing this honorable Court the following:

FIRST AFFIRMATIVE DEFENSE

Plaintiffs’ claims are barred in whole or in part because the Complaint fails to state a

claim upon which relief may be granted pursuant to O.C.G.A. § 9-11-12(b)(6).

SECOND AFFIRMATIVE DEFENSE

Plaintiffs' claims are barred in whole or in part due to the failure of a condition or conditions precedent.

THIRD AFFIRMATIVE DEFENSE

Plaintiffs' claims and the Complaint are barred by the doctrines of waiver, estoppel and laches.

FOURTH AFFIRMATIVE DEFENSE

Plaintiffs' claims and the Complaint are barred because Plaintiffs have unclean hands.

FIFTH AFFIRMATIVE DEFENSE

Defendants show they have acted in good faith towards Plaintiffs at all times.

SIXTH AFFIRMATIVE DEFENSE

Plaintiffs' claims and the Complaint are barred to the extent Defendants took any actions in connection with Plaintiffs' allegations, Defendants acted with reasonable care and in good faith towards Plaintiffs at all times, and without malice or oppression towards Plaintiffs.

SEVENTH AFFIRMATIVE DEFENSE

Plaintiffs' claims for equitable relief are barred by Plaintiffs' failure to comply with and satisfy conditions precedent for obtaining equitable relief.

EIGHTH AFFIRMATIVE DEFENSE

Plaintiffs' claims for tortious interference with property rights are barred by Plaintiffs' failure to comply with and satisfy the conditions precedent set forth in O.C.G.A. § 51-9-1.

NINTH AFFIRMATIVE DEFENSE

Plaintiffs' claims for injunctive relief are barred by Plaintiffs' failure to comply with and

satisfy the conditions precedent set forth in O.C.G.A. § 9-11-65.

TENTH AFFIRMATIVE DEFENSE

Plaintiffs' claims and the Complaint's prayer for attorneys fees are barred because Plaintiffs cannot demonstrate the conditions precedent for asserting a claim for attorneys fees under Georgia law.

ELEVENTH AFFIRMATIVE DEFENSE

Plaintiffs' claims and the Complaint's prayer for punitive damages are barred because Plaintiffs cannot demonstrate the conditions precedent for an award of punitive damages pursuant to O.C.G.A. § 51-12-5.1.

TWELFTH AFFIRMATIVE DEFENSE

Plaintiffs' requests for mandatory injunctive relief are barred because the requested relief exceeds the scope allowed under Georgia law and is unduly burdensome.

THIRTEENTH AFFIRMATIVE DEFENSE

Plaintiffs' claims and the Complaint are barred in whole or in part because of the plat filed in plat book 166, page 95 of the Fulton County real estate records.

FOURTEENTH AFFIRMATIVE DEFENSE

As discovery has not yet begun, Defendants specifically reserve the right to raise any additional claims or affirmative defenses which may be discovered. Defendants hereby incorporate by reference all affirmative defenses set forth in O.C.G.A. §§ 9-11-8(c) and 9-11-12(b) to the extent applicable. Defenses asserted herein are based upon the initial theories of defense counsel. Defendants further specifically reserve the right to withdraw or add any defenses to conform to the evidence presented at the time of trial. Additionally, Defendants specifically reserve the right to strike any allegation in the Complaint which is not supported by

the evidence and which would be immaterial. The final determination of defenses will be made by the evidence presented at the time of trial and by the charges given by the Court for jury consideration.

ANSWER

Each of the averments set forth in the Complaint is denied unless specifically admitted herein. Defendants deny all averments and claims for relief set forth in the introductory paragraph of the Complaint. Defendants answer the specific averments set forth within the Complaint as follows:

1.

Defendants can neither admit nor deny the averments set forth in Paragraph No. 1 of the Complaint for want of sufficient information to form a belief as to the truth thereof. To the extent that the averments set forth in this paragraph raise an inference that Plaintiffs are entitled to any relief requested against Defendants, such inference is denied.

2.

Defendants deny the averments set forth in Paragraph No. 2 of the Complaint.

3.

Defendants can neither admit nor deny the averments set forth in Paragraph No. 3 of the Complaint for want of sufficient information to form a belief as to the truth thereof. To the extent that the averments set forth in this paragraph raise an inference that Plaintiffs are entitled to any relief requested against Defendants, such inference is denied.

4.

Defendants can neither admit nor deny the averments set forth in Paragraph No. 4 of the Complaint for want of sufficient information to form a belief as to the truth thereof. To the

extent that the averments set forth in this paragraph raise an inference that Plaintiffs are entitled to any relief requested against Defendants, such inference is denied.

5.

Defendants admit the averments set forth in Paragraph No. 5 of the Complaint.

6.

Defendants admit the averments set forth in Paragraph No. 6 of the Complaint.

7.

Defendants admit the averments set forth in Paragraph No. 7 of the Complaint.

8.

Defendants can neither admit nor deny the averments set forth in Paragraph No. 8 of the Complaint for want of sufficient information to form a belief as to the truth thereof. To the extent that the averments set forth in this paragraph raise an inference that Plaintiffs are entitled to any relief requested against Defendants, such inference is denied.

9.

Defendants can neither admit nor deny the averments set forth in Paragraph No. 9 of the Complaint for want of sufficient information to form a belief as to the truth thereof. To the extent that the averments set forth in this paragraph raise an inference that Plaintiffs are entitled to any relief requested against Defendants, such inference is denied.

10.

Defendants can neither admit nor deny the averments set forth in Paragraph No. 10 of the Complaint for want of sufficient information to form a belief as to the truth thereof. To the extent that the averments set forth in this paragraph raise an inference that Plaintiffs are entitled to any relief requested against Defendants, such inference is denied.

11.

Defendants can neither admit nor deny the averments set forth in Paragraph No. 11 of the Complaint for want of sufficient information to form a belief as to the truth thereof. To the extent that the averments set forth in this paragraph raise an inference that Plaintiffs are entitled to any relief requested against Defendants, such inference is denied.

12.

Defendants can neither admit nor deny the averments set forth in Paragraph No. 12 of the Complaint for want of sufficient information to form a belief as to the truth thereof. To the extent that the averments set forth in this paragraph raise an inference that Plaintiffs are entitled to any relief requested against Defendants, such inference is denied.

13.

Defendants can neither admit nor deny the averments set forth in Paragraph No. 13 of the Complaint for want of sufficient information to form a belief as to the truth thereof. To the extent that the averments set forth in this paragraph raise an inference that Plaintiffs are entitled to any relief requested against Defendants, such inference is denied.

14.

Defendants can neither admit nor deny the averments set forth in Paragraph No. 14 of the Complaint for want of sufficient information to form a belief as to the truth thereof. To the extent that the averments set forth in this paragraph raise an inference that Plaintiffs are entitled to any relief requested against Defendants, such inference is denied.

15.

Defendants can neither admit nor deny the averments set forth in Paragraph No. 15 of the Complaint for want of sufficient information to form a belief as to the truth thereof. To the

extent that the averments set forth in this paragraph raise an inference that Plaintiffs are entitled to any relief requested against Defendants, such inference is denied.

16.

Defendants can neither admit nor deny the averments set forth in Paragraph No. 16 of the Complaint for want of sufficient information to form a belief as to the truth thereof. To the extent that the averments set forth in this paragraph raise an inference that Plaintiffs are entitled to any relief requested against Defendants, such inference is denied.

17.

Defendants can neither admit nor deny the averments set forth in Paragraph No. 17 of the Complaint for want of sufficient information to form a belief as to the truth thereof. To the extent that the averments set forth in this paragraph raise an inference that Plaintiffs are entitled to any relief requested against Defendants, such inference is denied.

18.

Defendants can neither admit nor deny the averments set forth in Paragraph No. 18 of the Complaint for want of sufficient information to form a belief as to the truth thereof. To the extent that the averments set forth in this paragraph raise an inference that Plaintiffs are entitled to any relief requested against Defendants, such inference is denied.

19.

Defendants can neither admit nor deny the averments set forth in Paragraph No. 19 of the Complaint for want of sufficient information to form a belief as to the truth thereof. To the extent that the averments set forth in this paragraph raise an inference that Plaintiffs are entitled to any relief requested against Defendants, such inference is denied.

20.

Defendants can neither admit nor deny the averments set forth in Paragraph No. 20 of the Complaint for want of sufficient information to form a belief as to the truth thereof. To the extent that the averments set forth in this paragraph raise an inference that Plaintiffs are entitled to any relief requested against Defendants, such inference is denied.

21.

Defendants state that the document referenced in Paragraph No. 21 of the Complaint is a legal document that speaks for itself. Defendants can neither admit nor deny the remaining averments set forth in this paragraph for want of sufficient information to form a belief as to the truth thereof. To the extent that the averments set forth in this paragraph raise an inference that Plaintiffs are entitled to any relief requested against Defendants, such inference is denied.

22.

Defendants state that the document referenced in Paragraph No. 22 of the Complaint is a legal document that speaks for itself. Defendants can neither admit nor deny the remaining averments set forth in this paragraph for want of sufficient information to form a belief as to the truth thereof. To the extent that the averments set forth in this paragraph raise an inference that Plaintiffs are entitled to any relief requested against Defendants, such inference is denied.

23.

Defendants state that the document referenced in Paragraph No. 23 of the Complaint is a legal document that speaks for itself. Defendants can neither admit nor deny the remaining averments set forth in this paragraph for want of sufficient information to form a belief as to the truth thereof. To the extent that the averments set forth in this paragraph raise an inference that Plaintiffs are entitled to any relief requested against Defendants, such inference is denied.

24.

Defendants state that the document referenced in Paragraph No. 24 of the Complaint is a legal document that speaks for itself. Defendants can neither admit nor deny the remaining averments set forth in this paragraph for want of sufficient information to form a belief as to the truth thereof. To the extent that the averments set forth in this paragraph raise an inference that Plaintiffs are entitled to any relief requested against Defendants, such inference is denied.

25.

Defendants state that the document referenced in Paragraph No. 25 of the Complaint is a legal document that speaks for itself. To the extent that the averments set forth in this paragraph raise an inference that Plaintiffs are entitled to any relief requested against Defendants, such inference is denied.

26.

Defendants admit the averments set forth in Paragraph No. 26 of the Complaint.

27.

Defendants state that the document referenced in Paragraph No. 27 of the Complaint is a legal document that speaks for itself. Defendants can neither admit nor deny the remaining averments set forth in this paragraph for want of sufficient information to form a belief as to the truth thereof. To the extent that the averments set forth in this paragraph raise an inference that Plaintiffs are entitled to any relief requested against Defendants, such inference is denied.

28.

Defendants can neither admit nor deny the averments set forth in Paragraph No. 28 of the Complaint for want of sufficient information to form a belief as to the truth thereof. To the extent that the averments set forth in this paragraph raise an inference that Plaintiffs are entitled

to any relief requested against Defendants, such inference is denied.

29.

Defendants state that the document referenced in Paragraph No. 29 of the Complaint is a legal document that speaks for itself. To the extent that the averments set forth in this paragraph raise an inference that Plaintiffs are entitled to any relief requested against Defendants, such inference is denied.

30.

Defendants can neither admit nor deny the averments set forth in Paragraph No. 30 of the Complaint for want of sufficient information to form a belief as to the truth thereof. To the extent that the averments set forth in this paragraph raise an inference that Plaintiffs are entitled to any relief requested against Defendants, such inference is denied.

31.

Defendants state that the document referenced in Paragraph No. 31 of the Complaint is a legal document that speaks for itself. To the extent that the averments set forth in this paragraph raise an inference that Plaintiffs are entitled to any relief requested against Defendants, such inference is denied.

32.

Defendants can neither admit nor deny the averments set forth in Paragraph No. 32 of the Complaint for want of sufficient information to form a belief as to the truth thereof. To the extent that the averments set forth in this paragraph raise an inference that Plaintiffs are entitled to any relief requested against Defendants, such inference is denied.

33.

Defendants state that the document referenced in Paragraph No. 33 of the Complaint is a

legal document that speaks for itself. To the extent that the averments set forth in this paragraph raise an inference that Plaintiffs are entitled to any relief requested against Defendants, such inference is denied.

34.

Defendants admit the averments set forth in Paragraph No. 34 of the Complaint.

35.

Defendants state that the document referenced in Paragraph No. 35 of the Complaint is a legal document that speaks for itself. To the extent that the averments set forth in this paragraph raise an inference that Plaintiffs are entitled to any relief requested against Defendants, such inference is denied.

36.

Defendants state that the document referenced in Paragraph No. 36 of the Complaint is a legal document that speaks for itself. To the extent that the averments set forth in this paragraph raise an inference that Plaintiffs are entitled to any relief requested against Defendants, such inference is denied.

37.

Defendants state that the document referenced in Paragraph No. 37 of the Complaint is a legal document that speaks for itself. To the extent that the averments set forth in this paragraph raise an inference that Plaintiffs are entitled to any relief requested against Defendants, such inference is denied.

38.

Defendants state that the document referenced in Paragraph No. 38 of the Complaint is a legal document that speaks for itself. To the extent that the averments set forth in this paragraph

raise an inference that Plaintiffs are entitled to any relief requested against Defendants, such inference is denied.

39.

Defendants admit the averments set forth in Paragraph No. 39 of the Complaint.

40.

Defendants deny the averments set forth in Paragraph No. 40 of the Complaint, stating that there was a picket fence surrounding the pool when they purchased the property.

41.

Defendants admit constructing a fence and driveway gate, but deny that such improvements cut off access to the backyard or any easement. To the extent that the averments set forth in this paragraph raise an inference that Plaintiffs are entitled to any relief requested against Defendants, such inference is denied.

42.

Defendants can neither admit nor deny the averments set forth in Paragraph No. 42 of the Complaint for want of sufficient information to form a belief as to the truth thereof. To the extent that the averments set forth in this paragraph raise an inference that Plaintiffs are entitled to any relief requested against Defendants, such inference is denied.

43.

Defendants can neither admit nor deny the averments set forth in Paragraph No. 43 of the Complaint for want of sufficient information to form a belief as to the truth thereof. To the extent that the averments set forth in this paragraph raise an inference that Plaintiffs are entitled to any relief requested against Defendants, such inference is denied.

44.

Defendants admit the averments set forth in Paragraph No. 44 of the Complaint.

45.

Defendants admit that they stated they were unaware of any easement agreement or easement right allowing the public to access their backyard. To the extent that the averments set forth in this paragraph raise an inference that Plaintiffs are entitled to any relief requested against Defendants, such inference is denied.

46.

Defendants deny Paragraph No. 46 of the Complaint, stating that Defendants were falsely asserting a right to use the driveway on the property to access the backyard of the property.

47.

Defendants deny Paragraph No. 47 of the Complaint.

48.

Defendants state that the document referenced in Paragraph No. 48 of the Complaint speaks for itself. To the extent that the averments set forth in this paragraph raise an inference that Plaintiffs are entitled to any relief requested against Defendants, such inference is denied.

49.

Defendants state that the document referenced in Paragraph No. 49 of the Complaint speaks for itself. To the extent that the averments set forth in this paragraph raise an inference that Plaintiffs are entitled to any relief requested against Defendants, such inference is denied.

50.

Defendants admit that, in reliance on the absence of the monument from the Plat or any easement agreement, and in the absence of any specification of an ongoing obligation to retain or

maintain the monument in the plat or any easement agreement, they hired a contractor to remove the monument from the property. To the extent that the averments set forth in this paragraph raise an inference that Plaintiffs are entitled to any relief requested against Defendants, such inference is denied.

51.

Defendants can neither admit nor deny the averments set forth in Paragraph No. 51 of the Complaint for want of sufficient information to form a belief as to the truth thereof. To the extent that the averments set forth in this paragraph raise an inference that Plaintiffs are entitled to any relief requested against Defendants, such inference is denied.

52.

Defendants admit advising Plaintiffs' counsel that the monument had previously been vandalized by an unknown individual. To the extent that the averments set forth in this paragraph raise an inference that Plaintiffs are entitled to any relief requested against Defendants, such inference is denied.

53.

Defendants admit the averments set forth in Paragraph No. 53 of the Complaint.

54.

Defendants state that the document referenced in Paragraph No. 54 of the Complaint speaks for itself. To the extent that the averments set forth in this paragraph raise an inference that Plaintiffs are entitled to any relief requested against Defendants, such inference is denied.

PRELIMINARY & PERMANENT INJUNCTIONS

55.

Defendants deny Paragraph No. 55 and deny that Plaintiffs are entitled to the injunctive

relief sought through this paragraph.

56.

Defendants deny Paragraph No. 56 and deny that Plaintiffs are entitled to the injunctive relief sought through this paragraph.

57.

Defendants deny Paragraph No. 57 and deny that Plaintiffs are entitled to the injunctive relief sought through this paragraph.

58.

Defendants deny Paragraph No. 58 and deny that Plaintiffs are entitled to the injunctive relief sought through this paragraph.

59.

Defendants deny Paragraph No. 59 and deny that Plaintiffs are entitled to the injunctive relief sought through this paragraph.

COUNT ONE: BREACH OF SETTLEMENT AGREEMENT

60.

Defendants hereby incorporate each and every answer stated above as if stated herein verbatim and do further show as follows:

61.

Defendants deny Paragraph No. 61 of the Complaint.

62.

Defendants deny Paragraph No. 62 of the Complaint.

63.

Defendants deny Paragraph No. 63 of the Complaint.

COUNT TWO: EQUITABLE RESCISSION OF THE SETTLEMENT AGREEMENT

64.

Defendants hereby incorporate each and every answer stated above as if stated herein verbatim and do further show as follows:

65.

Defendants deny Paragraph No. 65 of the Complaint.

COUNT THREE: TORTIOUS INTERFERENCE WITH PROPERTY RIGHTS

66.

Defendants hereby incorporate each and every answer stated above as if stated herein verbatim and do further show as follows:

67.

Defendants deny Paragraph No. 67 of the Complaint.

68.

Defendants deny Paragraph No. 68 of the Complaint.

COUNT FOUR: BREACH OF EASEMENT AGREEMENT

69.

Defendants hereby incorporate each and every answer stated above as if stated herein verbatim and do further show as follows:

70.

Defendants deny Paragraph No. 70 of the Complaint.

71.

Defendants deny Paragraph No. 71 of the Complaint.

72.

Defendants deny Paragraph No. 72 of the Complaint.

73.

Defendants deny Paragraph No. 73 of the Complaint.

74.

Defendants deny Paragraph No. 74 of the Complaint.

COUNT FIVE: ATTORNEY'S FEES

75.

Defendants hereby incorporate each and every answer stated above as if stated herein verbatim and do further show as follows:

76.

Defendants deny Paragraph No. 76 of the Complaint.

COUNT SIX: PUNITIVE DAMAGES

77.

Defendants hereby incorporate each and every answer stated above as if stated herein verbatim and do further show as follows:

78.

Defendants deny Paragraph No. 78 of the Complaint.

PERMANENT INJUNCTION

79.

Defendants deny Paragraph No. 79 and deny that Plaintiffs are entitled to the injunctive relief sought through this paragraph.

80.

Defendants deny Paragraph No. 80 and deny that Plaintiffs are entitled to the injunctive relief sought through this paragraph.

81.

Defendants deny that Plaintiffs are entitled to the relief for which Plaintiffs request and pray in the unnumbered paragraph, including subparts (a) – (h) of the *ad damnum* prayer for relief immediately following Paragraph No. 80 of the Complaint, and further deny that Plaintiffs can satisfy the conditions precedent for any such damages, recovery, or relief sought against Defendants under any applicable Georgia statute or law. Any and all facts, contentions, claims, averments, and/or demands set forth in the Complaint not expressly admitted herein, including those set forth in the *ad damnum* prayer for relief, are hereby denied.

WHEREFORE, Defendants pray as follows:

- (a) The Court allow trial by jury of all issues so triable;
- (b) Plaintiffs take nothing by the Complaint and that the Complaint be dismissed in its entirety;
- (c) Judgment be entered in favor of Defendants and against Plaintiffs;
- (d) The Court award Defendants costs of litigation, including, but not limited to reasonable attorneys' fees; and,
- (e) The Court grant Defendants such other relief as is just and proper.

COUNTERCLAIMS AND THIRD-PARTY COMPLAINT

In further response to the Complaint, and by way of counterclaim and third-party complaint, Defendants respectfully show this Honorable Court the following in accordance with O.C.G.A. §§ 9-11-13 and 9-11-14.

PARTIES, JURISDICTION AND VENUE

1.

Jason King and Charles B. Cook, as counterclaim plaintiffs and third-party plaintiffs, submit to the jurisdiction of this Court for the purposes of these counterclaims and third-party claims.

2.

By virtue of filing the Complaint, this Court has personal jurisdiction over Plaintiffs.

3.

Third-Party Defendant Old Republic National Title Insurance Company (“Old Republic”) is an insurance company organized under the laws of the state of Florida and authorized to do business in the State of Georgia. It may be served through its registered agent, Timothy Minors, at 1125 Sanctuary Parkway, Suite 140, Alpharetta, Fulton County, Georgia 30009, and upon service shall be subject to the jurisdiction of this Court.

4.

Third-Party Defendants Joseph Trachtenberg and Wendy Silver are residents of Fulton County. They may be served at their residence at 145 15th Street, NE Unit 1002, Atlanta, Fulton County, Georgia 30309 and upon service shall be subject to the jurisdiction of this Court.

5.

By virtue of the Complaint, venue is proper in this Court.

6.

This Court has proper subject matter jurisdiction of all issues presented in this Counterclaim and Third-Party Complaint.

7.

In accordance with O.C.G.A. § 9-11-14(c), attached hereto as Exhibit A are true and correct copies of the Complaint and all other pleadings which have been filed in the action.

STATEMENT OF FACTS

8.

Defendants are the owners of that certain property located at 797 Ponce de Leon Terrace, Atlanta, Georgia 30306 (the "Property").

9.

Defendants purchased the Property in 2014 from Third-Party Defendants Joseph Trachtenberg and Wendy Silver, via that certain *Limited Warranty Deed* recorded in deed book 53984, page 302 of the real estate records of Fulton County, Georgia (the "2014 Deed").

10.

The Deed incorporated, through its legal description, the subdivision plat for the Property recorded in plat book 166, page 95 of the real estate records of Fulton County (the "Plat").

11.

The Plat contains the notation "5' Ingress Egress Easement" located on a designated strip running along the eastern boundary of the Property.

12.

The "5' Ingress Egress Easement" strip does not encompass the driveway of the Property, but rather is confined to the eastern edge of the Property.

13.

The driveway begins on the western edge of the Property before turning southeast to connect to the parking pad located in the rear of the Property.

14.

Upon information and belief, the strip of land burdened by the “5’ Ingress Egress Easement” on the Property has never been utilized for such purposes, has never been developed or maintained for such purposes, and reflects abandonment by those seeking to use it for ingress and egress.

15.

When Defendants purchased the Property, it included a picket fence surrounding a swimming pool on the Property.

16.

The Plat and the “5’ Ingress Egress Easement” and “Marker Easement” notations do not include any reference to or description of the fence surrounding the swimming pool or any fencing separating the “5’ Ingress Egress Easement” and “Marker Easement” from the remainder of the Property.

17.

Following their purchase of the Property, Defendants removed the fence surrounding the swimming pool.

18.

Following their purchase of the Property, Defendants installed a gate across the driveway (the “Driveway Gate”).

19.

The Driveway Gate is not located on the area denoted “5’ Ingress Egress Easement” on the Plat.

20.

The Plat contains the notation “Marker Easement” in the southeastern corner of the Property.

21.

The Plat does not describe or set forth any improvements or fixtures contained within the area denoted with “Marker Easement,” nor does it otherwise describe a purpose, scope of usage, or maintenance responsibilities associated with the “Marker Easement.”

22.

Upon information and belief, a predecessor in title to Defendants installed a carved and inscribed monument stone and associated improvements on the Property in the area denoted “Marker Easement” (the “Monument Stone”).

23.

The Monument Stone reflects that, at one time, portions of the Property were formerly used as a cemetery and burial area.

24.

Mr. Trachtenberg and Ms. Silver were personally aware of the Monument Stone and its association with a former cemetery and burial area on the Property, and that members of the public would periodically utilize the driveway to visit the Monument Stone based upon purported easement rights set forth in the Plat.

25.

Despite such personal knowledge, Mr. Trachtenberg and Ms. Silver failed to disclose to Defendants that members of the public had periodically come up the driveway on the Property to visit the Monument Stone based upon purported easement rights set forth in the Plat.

26.

Despite such personal knowledge, Mr. Trachtenberg and Ms. Silver misrepresented to Defendants that the Monument Stone was owned by the City of Atlanta and that the occasional visits were based on their grant of permission and not based upon purported easement rights set forth in the Plat.

27.

In choosing to purchase the Property, Defendants justifiably relied upon the misrepresentations and omissions of Mr. Trachtenberg and Ms. Silver.

28.

In connection with their purchase of the Property from Mr. Trachtenberg and Ms. Silver, Defendants purchased an owners title insurance policy from Old Republic, policy No.: EHP-084777260 (the "Title Policy").

29.

Pursuant to the Title Policy, Old Republic obligated itself to defend against any claim that "someone else has an encumbrance on Your Title."

30.

Upon learning of Plaintiffs' claims against them – including specifically Plaintiffs' claims seeking "restoration of the fence" and "the removal of . . . the gate blocking the driveway" – Defendants notified Old Republic of such claimed encumbrances against their title and demanded that Old Republic defend against such claims.

31.

Old Republic refused to provide coverage and defense of any claims asserted by Plaintiffs, including specifically Plaintiffs' claims for restoration of the Monument Stone and

associated improvements, restoration of certain fencing, and unfettered access up and down the driveway on the Property for ingress and egress to the Monument Stone.

32.

Additionally, Defendants notified Mr. Trachtenberg and Ms. Silver of Plaintiffs' claims – including specifically Plaintiffs' claims seeking “restoration of the fence” and “the removal of . . . the gate blocking the driveway”.

33.

Mr. Trachtenberg and Ms. Silver refused to defend against Plaintiffs' claims or otherwise assist in resolution of this dispute - including specifically regarding Plaintiffs' claims seeking “restoration of the fence” and “the removal of . . . the gate blocking the driveway”.

COUNTERCLAIM ONE – TRESPASS

34.

Defendants hereby incorporate each and every paragraph stated above as if stated herein verbatim and do further show as follows:

35.

The Plat's notation “5' Ingress Egress Easement” is contained in a strip of land designated on the Plat and running along the eastern boundary line of the Property.

36.

The designated strip does not encompass the driveway located on the Property.

37.

Plaintiffs have absolutely no right based on the Plat or otherwise to use the driveway located on the Property to access the backyard of the Property or the Monument Stone.

38.

Despite having no right to use the driveway to access the backyard of the Property or the Monument Stone, Plaintiffs have used the driveway for such purposes without permission and have communicated to third-parties that it is permissible for the public to use the driveway to enter the backyard of the Property.

39.

Plaintiffs' unauthorized use of the driveway has interfered with Defendants' ability to exclusively possess the Property.

40.

Plaintiffs' actions therefore constitute the tort of trespass as defined by O.C.G.A. § 51-9-1.

41.

As a result of Plaintiffs' trespasses, Defendants have suffered and will continue to suffer damages resulting from their inability to exclusively possess and enjoy the Property.

42.

Plaintiffs are liable for all damages flowing from these trespasses in an amount to be proven at trial.

THIRD-PARTY CLAIM ONE – BREACH OF WARRANTY

(TRACHTENBERG AND SILVER)

43.

Defendants hereby incorporate each and every paragraph stated above as if stated herein verbatim and do further show as follows:

44.

In conveying the Property to Defendants via the 2014 Deed, Mr. Trachtenberg and Ms. Silver obligated themselves to “warrant and forever defend the right and title to the Premises . . . against the claims of all person[s] claiming by, through or under Grantor”

45.

Plaintiffs claim a right to have Defendants rebuild the fence surrounding the pool which, upon information and belief, was constructed by Mr. Trachtenberg and Ms. Silver during their ownership of the Property.

46.

Plaintiffs claim a right to utilize the driveway on the Property to access the Monument Stone and, upon information and belief, actually utilized the driveway on the Property to access the Monument Stone while Mr. Trachtenberg and Ms. Silver owned the Property.

47.

Despite receiving notice of Plaintiffs’ claims against Defendants’ title to the Property, Mr. Trachtenberg and Ms. Silver have refused to defend against Plaintiffs’ claims.

48.

Such refusal constitutes breach of their warranty of title set forth in the 2014 Deed.

49.

Mr. Trachtenberg and Ms. Silver are liable for all damages flowing from such breach, and shall be further liable to Defendants for such damages or other relief awarded to Plaintiffs against Defendants as a result of such claims.

THIRD-PARTY CLAIM TWO – FRAUD (TRACHTENBERG AND SILVER)

50.

Defendants hereby incorporate each and every paragraph stated above as if stated herein verbatim and do further show as follows:

51.

Mr. Trachtenberg and Ms. Silver made the following misrepresentations to Defendants: 1) that the Property did not contain a hidden defect in that members of the public claimed a right to use the driveway to access the backyard of the Property, and 2) that the Monument Stone was owned by the City of Atlanta.

52.

Mr. Trachtenberg and Ms. Silver made the foregoing misrepresentations in an effort to induce Defendants into purchasing the Property from them.

53.

Defendants reasonably relied on the misrepresentations made by Mr. Trachtenberg and Ms. Silver.

54.

Relying on such misrepresentations, Defendants purchased the Property from Mr. Trachtenberg and Ms. Silver.

55.

Because of the misrepresentations of Mr. Trachtenberg and Ms. Silver, Defendants have suffered damages in having to defend against claims associated with the Monument Stone and public access to it through the driveway, as well as through a diminution in value due to such access claims and the Property's history as a former cemetery and burial site.

THIRD-PARTY CLAIM THREE – BREACH OF CONTRACT (OLD REPUBLIC)

56.

Defendants hereby incorporate each and every paragraph stated above as if stated herein verbatim and do further show as follows:

57.

Through the Title Policy, Defendants entered into a valid contract with Old Republic in which, for valuable consideration, Old Republic obligated itself to defend against any claim that “someone else has an encumbrance on Your Title.”

58.

Old Republic breached its contractual obligations under the Title Policy by refusing to provide coverage and defend Defendants against the Plaintiffs’ claims, including specifically Plaintiffs’ claims for restoration of the Monument Stone, restoration of certain fencing, and unfettered access up and down the driveway on the Property for ingress and egress to the Monument Stone.

59.

Defendants have suffered damages and will continue to suffer damages flowing from Old Republic’s breach.

60.

Old Republic is liable for such damages, and shall be further liable to Defendants for any such damages or other relief awarded to Plaintiffs against Defendants as a result of such claims.

THIRD-PARTY CLAIM THREE – BAD FAITH (OLD REPUBLIC)

61.

Defendants hereby incorporate each and every paragraph stated above as if stated herein

verbatim and do further show as follows:

62.

Defendants purchased the Title Policy from Old Republic for valuable consideration, and in return, Old Republic obligated itself to defend against any claim against Defendants that “someone else has an encumbrance on Your Title.”

63.

Plaintiffs’ claim the Property is encumbered with obligations to allowing unfettered access up and down the driveway on the Property for ingress and egress to the Monument Stone, compelling installation of certain fencing, and compelling the restoration of the Monument Stone.

64.

Plaintiff’s claims constitute a loss under the Title Policy as that term is considered under O.C.G.A. § 33-4-6.

65.

Defendants timely provided notice of such claims to Old Republic and demanded coverage pursuant to the Title Policy.

66.

Old Republic refused to provide coverage or assistance with defense of such claims in any manner within sixty (60) days of Defendants’ notice despite such claims being covered losses under the Title Policy.

67.

Old Republic’s refusal was made in bad faith and based upon preserving its pecuniary interests.

68.

As a result of such bad faith, Old Republic is liable to Defendants for attorneys fees and other statutory amounts set forth in O.C.G.A. § 33-4-6(a).

**COUNTERCLAIM TWO AND THIRD-PARTY CLAIM FIVE – ATTORNEYS FEES
AND EXPENSES OF LITIGATION (PLAINTIFFS, OLD REPUBLIC AND
TRACHTENBERG AND SILVER)**

69.

Defendants hereby incorporate each and every paragraph stated above as if stated herein verbatim and do further show as follows:

70.

The conduct of Plaintiffs, Old Republic and Trachtenberg and Silver as alleged hereinabove amounts to bad faith, as that term is used in O.C.G.A. § 13-6-11.

71.

Pursuant to O.C.G.A. § 13-6-11, Defendants are entitled to an award of reasonable attorneys' fees and expenses of litigation in the defense and pursuit of this litigation to enforce their rights.

WHEREFORE, Defendants respectfully request that:

- (a) This Court allow trial by jury of all issues so triable;
- (b) Judgment be entered in favor of Defendants and against Plaintiffs upon Counterclaim One in an amount to be proven at trial;
- (c) Judgment be entered in favor of Defendants and against Trachtenberg and Silver and Old Republic upon Third-Party Claims One, Two, and Three respectively;
- (d) The Court award Defendants costs of expenses and litigation, including reasonable

attorney's fees and expert witness fees, pursuant to O.C.G.A. § 13-6-11; and,

- (e) The Court award Defendants such other and further relief as this Court Deems just and equitable.

JURY TRIAL DEMANDED

This 21st day of September, 2016.

WILLIAMS TEUSINK, LLC

/s/ David Metzger

R. Kyle Williams

Georgia Bar No. 763910

David Metzger

Georgia Bar No. 363534

The High House
309 Sycamore Street
Decatur, Georgia 30030
Tel: (404) 373-9590
Fax: (404) 378-6049

Counsel for Defendants Jason King and Charles B. Cook, Jr.

**IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA**

**DEBORA LIDDELL, BLAKE LIDDELL
And VIRGINIA-HIGHLAND CIVIC
ASSOCIATION, INC.,**

Plaintiffs,

v.

JASON KING and CHARLES B. COOK,

Defendants,

v.

**OLD REPUBLIC NATIONAL TITLE
INSURANCE COMPANY, JOSEPH
TRACHTENBERG and WENDY
SILVER**

Third-Party Defendants.

Civil Action File No. 2016CV279090

CERTIFICATE OF SERVICE

This is to certify that I have this day served counsel in the foregoing matter with a copy of the foregoing pleading through the Odyssey eFile service to:

Daniel Moriarity
Green, Sapp & Moriarity, LLP
790 Hammond Drive
Building 8
Suite 200
Atlanta, GA 30328

This 21st day of September, 2016.

WILLIAMS TEUSINK, LLC

/s/ David Metzger

R. Kyle Williams

Georgia Bar No. 763910

David Metzger

Georgia Bar No. 363534

The High House
309 Sycamore Street
Decatur, Georgia 30030
Tel: (404) 373-9590
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Counsel for Defendants Jason King and Charles B. Cook, Jr.

IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

DEBORA LIDDELL, BLAKE LIDDELL
And VIRGINIA-HIGHLAND CIVIC
ASSOCIATION, INC.,

Plaintiffs,

v.

JASON KING and CHARLES B. COOK,

Defendants,

v.

OLD REPUBLIC NATIONAL TITLE
INSURANCE COMPANY, JOSEPH
TRACHTENBERG and WENDY
SILVER

Third-Party Defendants.

Civil Action File No. 2016CV279090

VERIFICATION

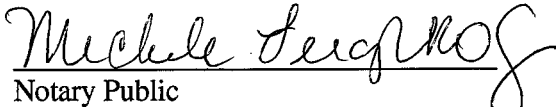
PERSONALLY APPEARED before me, an officer duly authorized by law to administer oaths, CHARLES B. COOK, who after first being duly sworn, states that he has read the *Verified Answer, Affirmative Defenses, Counterclaims, and Third-Party Complaint of Defendants Jason King and Charles B. Cook* and that the factual information contained therein is true and correct.

FURTHER AFFIANT SAYETH NOT.



Charles B. Cook

Sworn to and subscribed
Before me this 19 day of September, 2016.



Notary Public
My commission expires: 12/11/2016

IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

DEBORA LIDDELL, BLAKE LIDDELL
And VIRGINIA-HIGHLAND CIVIC
ASSOCIATION, INC.,

Plaintiffs,

v.

JASON KING and CHARLES B. COOK,

Defendants,

v.

OLD REPUBLIC NATIONAL TITLE
INSURANCE COMPANY, JOSEPH
TRACHTENBERG and WENDY
SILVER

Third-Party Defendants.

Civil Action File No. 2016CV279090

VERIFICATION

PERSONALLY APPEARED before me, an officer duly authorized by law to administer oaths, JASON KING, who after first being duly sworn, states that he has read the *Verified Answer, Affirmative Defenses, Counterclaims, and Third-Party Complaint of Defendants Jason King and Charles B. Cook* and that the factual information contained therein is true and correct.

FURTHER AFFIANT SAYETH NOT.

Sworn to and subscribed
Before me this 19 day of September 2016

Edna E Hunter
Notary Public
My commission expires:

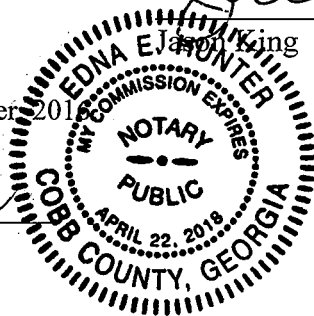


Exhibit A

**IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA**

DEBORA LIDDELL, BLAKE LIDDELL :
and VIRGINIA-HIGHLAND CIVIC :
ASSOCIATION, INC., : FILE NO. 2016CV279090
: FILE NO. _____
Plaintiffs, :
v. :
JASON KING and CHARLES B. COOK, :
JR., :
Defendants, :
_____ :

**VERIFIED COMPLAINT FOR DAMAGES AND EQUITABLE RELIEF, INCLUDING
PRELIMINARY INJUNCTION**

Debora Liddell, Blake Liddell, and Virginia-Highland Civic Association, Inc. file this complaint to restore an historic landmark and family-gravesite memorial on the property of Defendants Jason King and Charles B. Cook, Jr. Defendants' property contains a 10 foot by 10 foot "Marker Easement"—a stone monument enclosed by a low brick wall and gated wrought-iron fence—commemorating the gravesite of Virginia-Highland's first settlers, Richard and Martha Todd ("the Todd Cemetery Memorial"). Although Defendants knew that the Marker Easement protected the landmark—and agreed to allow the public to visit the memorial in a mid-December 2015 settlement agreement—Defendants hired a contractor in late-December 2015 to destroy and remove the monument from their property. Plaintiffs seek a preliminary injunction to preserve any remnants of the memorial, damages to rebuild the memorial, and a permanent injunction protecting the historic landmark for future generations.

PARTIES AND JURISDICTION

1. Virginia-Highland Civic Association, Inc. ("VHCA") is a volunteer-led Georgia non-profit organization tasked with maintaining and improving Atlanta's Virginia-Highland

neighborhood by, among other things, ensuring that the neighborhood's historic landmarks are documented, protected and accessible to the public.

2. Since at least the 1980s, the VHCA has played an active role in ensuring that the Todd Cemetery Memorial is open and accessible to the public, and has educated its members (all Virginia-Highland residents are automatically members) about the historical significance of the memorial. Throughout the years, many VHCA members have visited the Todd Cemetery Memorial.

3. Debora Liddell is a great-great-great granddaughter of Richard and Martha Todd (her grandparents were Richard and Martha Todd's great grandchildren). She is a resident of Iowa City, Iowa. Last year, Ms. Liddell attempted to visit the Todd Memorial, but could not enter Defendants' property because it was blocked by a newly-built fence and gate across the easement.

4. Blake Liddell is a great-great-great-great grandson of Richard and Martha Todd. He is a resident of Acworth, Georgia.

5. Defendants Jason King and Charles Brian Cook, Jr. own and reside at 797 Ponce de Leon Terrace, Atlanta, Fulton County, Georgia.

6. This Court has subject-matter jurisdiction over Plaintiffs' claims for money damages and equitable relief under OCGA § 15-6-8.

7. This Court has personal jurisdiction over Defendants, who are both Fulton County residents.

BACKGROUND

8. Richard and Martha Todd settled in the area now known as Virginia-Highland in 1822, occupying a 202½ acre rectangular tract sandwiched between present-day North Avenue to the south and Adair Avenue to the north.

9. Richard bought the land from William Zachry, who acquired the land formerly occupied by the Creek Indian Nation through Georgia's Land Lottery of 1821.

10. After Richard and Martha died in 1851 and 1896 respectively, the two were buried in the family cemetery located near the rear of their home.

11. The family cemetery was located on Defendants' present-day property.

12. In 1925, the Todds' son John C. Todd established by deed in his will a 55 foot by 110 foot tract containing the graves as a family cemetery.

13. John C. Todd's will further provided that the estate would purchase a marker to identify the graves of his parents, Richard and Martha.

14. In 1932, John's daughter, Emma May Todd Liddell, deeded the cemetery to the City of Atlanta. The City agreed to convert the surrounding area into a park and preserve the cemetery.

15. The entire tract was thereafter known as Todd Park.

16. Against Mrs. Liddell's wishes, the City returned Todd Park to her in 1949.

17. In 1955, the Liddell family deeded Todd Park to A.R. Alley with the understanding that Alley would obtain a disinterment permit from the City of Atlanta to remove and relocate the bodies.

18. Alley is believed to have obtained the permit, but it is unclear whether he ever paid to have the bodies removed. An investigation by Georgia Vault Service in the late-1980s identified 11 potential gravesites, but was unable to determine whether the bodies had been removed, and explained that in any event, because of the primitive methods use to inter bodies at the time the Todds died, "removing" the graves is a legal fiction.

19. No records have been found at any cemetery in the Atlanta area recording the transfer of the remains of Richard or Martha Todd—or any of the other relatives buried in the family cemetery.

20. In 1984, Alley's sole heir deeded Todd Park to real-estate developer Sam Dickson.

21. In 1989, Dickson petitioned Fulton County Superior Court to "relocate" all graves on the property to a 10 foot by 10 foot parcel located at 797 Ponce de Leon Terrace, and to place the late 1920s marker identifying Richard and Martha Todd on the memorial. (*See* Petition, attached as Exhibit A).

22. Dickson further petitioned for the 10 foot by 10 foot parcel to be surrounded by a brick enclosure and a gated wrought iron fence "to provide access to the site."

23. Finally, Dickson petitioned for a 5-foot wide "perpetual" easement of ingress and egress, "providing access to family members and the public to the enclosed site."

24. Based on Dickson's promise to create the 10 foot by 10 foot memorial easement and accompanying easement of ingress and egress, John C. Todd's four living grandchildren agreed to Dickson's petition proposals. (*See* Consent Judgments, attached as Exhibit B).

25. On July 3, 1989, Fulton County Superior Court judge Edward Johnson granted Dickson's petition. (*See* Order, attached as Exhibit C).

26. After the Order was issued, Dickson divided Todd Park into two tracts: Lot A and Lot B. Lot B became 797 Ponce de Leon Terrace.

27. On April 20, 1990, Dickson recorded the "Marker Easement" and the "Ingress-Egress Easement" on a plat filed in Book 166, Page 95 of the Fulton County plat and survey records. (*See* Plat, attached as Exhibit D). Both easements are located in Lot B, 797 Ponce de Leon Terrace. The Plat reads: "this Plat was made from the actual survey and dedicates to the need of the

public forever all . . . easements and public places thereon shown for the purposes and considerations thereon expressed.”

28. In 1992, Dickson sold 797 Ponce de Leon Terrace to Jane Goodwin, who immediately sold the property to In Town Enterprises, Inc.

29. The warranty deeds from the 1992 sales both identify the property being sold as “Lot B of Todd Park” as per the plat “recorded in Plat Book 166, Page 95, Fulton County, Georgia”—the same plat containing the recorded “Marker Easement” and “Ingress-Egress Easement.” (See 1992 Warranty Deeds, attached as Exhibit E and F).

30. In 1993, In Town Enterprises, Inc. sold the property to Holland Construction, Inc.

31. The 1993 Warranty Deed identifies the property being sold as Lot B of Todd Park, as “recorded in Plat Book 166, Page 95, Fulton County, Georgia.” (See 1993 Warranty Deed, attached as Exhibit G).

32. In 1994, Holland Construction, Inc. sold the property to Joseph Trachtenberg and Wendy Silver.

33. The 1994 Warranty Deed likewise identifies the property being sold as Lot B in Plat Book 166, Page 95. (See 1994 Warranty Deed, attached as Exhibit H).

34. On July 7, 2014, Trachtenberg and Silver sold 797 Ponce de Leon Terrace to the Defendants.

35. The 2014 Limited Warranty Deed once again identifies the land being sold as Lot B of the Todd Park Subdivision, as described in the “plat recorded in Plat Book 166, Page 95, Fulton County.” (See 2014 Limited Warranty Deed, attached as Exhibit I).

36. The deed further provides that the plat recorded in Plat Book 166, Page 95 is “incorporated herein by reference and made a part of this description.”

37. Finally, the deed provides that it “is given subject to all easements, restrictions and encumbrances of record.”

38. In addition to the Limited Warranty Deed, Exhibit A to the Security Deed identifies the sold property as “Lot B, Todd Park Subdivision, as per plat recorded in Plat Book 166, Page 95, Fulton County.” (See Exhibit A to the Security Deed, attached as Exhibit J).

39. Both defendants initialed Exhibit A to the Security Deed.

40. At the time Defendants bought the property, a fence separated the Ingress-Egress Easement from the backyard (and the backyard’s swimming pool). The fence ran north to south on the eastern side of the property, and did not impede access to the monument.

41. After buying the property, Defendants removed the existing fence and built a fence and gate running west to east in the entrance of the backyard, which cut off access to the Ingress-Egress Easement.

42. In 2015, Plaintiff Debora Liddell and at least one Virginia-Highland citizen contacted the VHCA about the newly-built fence that cut off access to the easement.

43. Ms. Liddell is among the members of the public who were unable to visit the Todd Cemetery Memorial because of the newly-built fence.

44. Shortly thereafter, VHCA representatives visited Defendants to discuss this concern.

45. At the meeting, Defendants denied that they had any legal obligation to allow public access to the monument.

46. For the remainder of 2015, the VHCA negotiated in good faith with the Defendants in an effort to resolve this dispute without litigation.

47. In mid-December 2015, the VHCA and King orally reached a settlement agreement.

48. On December 17, 2015, the VHCA's attorney sent the following email to King memorializing the terms of the agreement: "We have a deal. The VHCA will not pursue any litigation concerning the easement in your backyard. In return, you will post a sign on your driveway fence identifying the monument, warning the public of your pool, and asking the public to only visit during daylight hours. The VHCA will design the sign at its expense, and will provide a draft of the sign for your approval before it is posted. You will also add the VHCA as an additional insured to your homeowner's policy. The VHCA will need documentation showing that is an additional insured for its records." (See December 2015 emails, attached as Exhibit K).

49. King responded that same day with the following email: "I'm writing to acknowledge receipt of your message." (Exhibit K).

50. In late-December 2015, King and Cook hired a contractor to destroy the monument and remove its remnants from the property.

51. Plaintiffs do not know whether the vault containing soil from the gravesites is still below the monuments.

52. In early-January 2016, King told the VHCA's attorney that vandals had destroyed the memorial in November 2015.

53. Vandals did not destroy the memorial in November 2015—or in December 2015.

54. After learning that Plaintiffs intended to file this lawsuit, King sent the VHCA's attorney a March 30, 2016 letter acknowledging that the parties "had reached an agreement regarding the easement," and cited the above-December 2015 emails as proof of a "written contract." (See March 2016 letter, attached as Exhibit L).

PRELIMINARY & PERMANENT INJUNCTION

55. Plaintiffs seek a preliminary injunction preventing Defendants (A) from removing any remaining parts of the memorial, (B) from altering the land where the memorial rested, and (C) from removing the vault containing soil from the Todd gravesites.

56. If such an injunction is not entered, Plaintiffs may suffer irreparable harm; from the removal of priceless remains of the memorial, from the alteration of the land that would make it impossible to construct a future memorial on the same location, and from the loss of soil from the Todd-family gravesite.

57. This potential harm substantially outweighs any harm to the Defendants. Preventing Defendants from further destroying the memorial or altering the land would be of no cost to Defendants, and since Defendants have never had a private-property interest in the land protected by the easement, they would not have any rights taken away from them. In contrast, the harms to Plaintiffs should Defendants continue to dismantle the memorial are irreversible.

58. As the attached exhibits demonstrate, Plaintiffs are substantially likely to prevail on the merits. Specifically, the exhibits show that Defendants bought 797 Ponce de Leon Terrace with notice of the easements, and agreed to respect the existence of the easement in December 2015. Nonetheless, Defendants' destroyed the memorial protected by the Marker Easement and obstructed the Ingress-Egress Easement.

59. Finally, granting the injunction would not be adverse to the public interest, as it would best preserve the public's right to view this important historical site in the future.

COUNT ONE: BREACH OF SETTLEMENT AGREEMENT

60. Plaintiffs incorporate the preceding paragraphs into Count I.

61. The VHCA and Defendants reached a binding settlement agreement in mid-December 2015 wherein the Defendants agreed to post a sign inviting the public to visit the Todd Cemetery Memorial during daylight hours.

62. Defendants breached the contract by hiring a contractor to destroy and remove the Todd Cemetery Memorial a few weeks later.

63. The VHCA is entitled to damages and specific performance—the reconstruction of the monument on Defendants' property—for this breach.

COUNT TWO: EQUITABLE RESCISSION OF THE SETTLEMENT AGREEMENT

64. Plaintiffs incorporate the preceding paragraphs into Count II.

65. In the alternative, Defendants' bad-faith material breach of the settlement agreement entitles the VHCA to an equitable rescission of the settlement agreement.

COUNT THREE: TORTIOUS INTERFERENCE WITH PROPERTY RIGHTS

66. Plaintiffs incorporate the preceding paragraphs into Count III.

67. By building the new fence and gate and later destroying the monument, Defendants willfully and wrongfully interfered with Plaintiffs' right to use and enjoy the Marker Easement and the Ingress-Egress Easement.

68. Defendants' interference with Plaintiffs' property rights damaged Plaintiffs.

COUNT FOUR: BREACH OF EASEMENT AGREEMENT

69. Plaintiffs incorporate the preceding paragraphs into Count IV.

70. Defendants bought 797 Ponce de Leon Terrace with actual and constructive notice of the Marker Easement and the Ingress-Egress Easement.

71. By purchasing the property with notice and knowledge of the easements, Defendants agreed to honor the recorded easements.

72. Defendants' conduct constitutes a continuing interference with the Plaintiffs' rights of access to the Marker Easement. The demolition of the historic marker has resulted in a continuing breach of the Easement Agreement.

73. Plaintiffs' have no adequate remedy at law given the unique nature of the historic marker and access thereto.

74. Plaintiffs are entitled to equitable relief as prayed for below, including a decree compelling the Defendants to restore the marker and the Marker Easement to its original condition, and to the restore the fence along the Ingress-Egress Easement.

COUNT FIVE: ATTORNEY'S FEES

75. Plaintiffs incorporate the preceding paragraphs into Count V.

76. If Plaintiffs succeed on either their tortious interference with property rights claim or their breach of contract claims, they are entitled to reasonable attorney's fees upon a showing of bad faith.

COUNT SIX: PUNITIVE DAMAGES

77. Plaintiffs incorporate the preceding paragraphs into Count VI.

78. If Plaintiffs succeed on their tortious interference with property rights claim, they are entitled to punitive damages upon a showing by clear and convincing evidence that Defendants' misconduct was willful.

PERMANENT INJUNCTION

79. Finally, at the conclusion of this case, Plaintiffs seek a permanent injunction compelling the restoration of the Todd Cemetery Memorial in the material form and location of the original monument, the restoration of the fence that separated the monument from the swimming

pool, and the removal of all obstructions—including the gate blocking the driveway—to access the monument.

80. A permanent injunction is warranted because Defendants' conduct has consistently demonstrated an intent to interfere with Plaintiffs' rights to access and enjoy the monument, and Plaintiffs have no adequate remedy at law. The monument and the location of the monument are unique, with both historical significance to the community and personal significance to the Todd Family, including the Liddell Plaintiffs.


WHEREFORE, Plaintiffs prays that the Court:

- (a) Enter an interlocutory injunction preventing Defendants (A) from removing any remaining parts of the memorial, (B) from altering the land where the memorial rested, and (C) from removing the vault containing soil from the Todd gravesites;
- (b) Find that Defendants' breached the settlement agreement, award money damages, and enter a decree compelling Defendants to restore the monument and the Marker Easement to its original condition;
- (c) In the alternative, equitably rescind the settlement agreement, enter judgment against Defendants on the tortious interference with property rights claim and breach of the easement agreement claim—as well as Plaintiffs' claims for punitive damages and attorney's fees—and enter a decree compelling Defendants to restore the monument and the Marker Easement to its original condition, and to restore the fence along the Ingress-Egress Easement;
- (d) Enter a permanent injunction compelling the restoration of the monument in material form and location of the original monument, and prohibiting Defendants from interfering with access to the Ingress-Egress Easement and the Marker Easement;

- (e) Hold a trial by twelve-member jury to determine money damages, including punitive damages;
- (f) Hold a trial by twelve-member jury to determine liability, if needed;
- (g) Award Plaintiffs' reasonable attorney's fees;
- (h) Grant such other and further relief that this Court deems just and proper.

Respectfully submitted, this 18 day of August, 2016.

GREEN, SAPP & MORIARTY, LLP


DANIEL J. MORIARTY
Georgia Bar No. 689867
Attorney for Plaintiffs

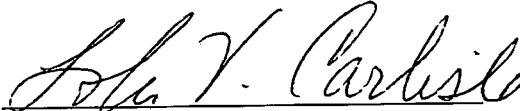
750 Hammond Drive
Building 8, Suite 200
Atlanta, Georgia 30328
770-690-8001 (Telephone)
770-690-8206 (Facsimile)
dmoriarty@greensapp.com

VERIFICATION

STATE OF GEORGIA

COUNTY OF FULTON

Personally appeared before the undersigned officer, duly authorized to administer oaths, **Lola Carlisle, a board member of Virginia-Highland Civic Association, Inc.**, who, after being duly sworn, states that the facts contained in the *Verified Complaint for Damages and Equitable Relief, Including Preliminary Injunction* are true and correct to the best of her knowledge, information and belief.

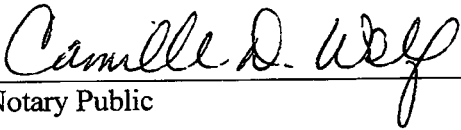


Lola Carlisle

On behalf of Virginia-Highland Civic Association, Inc.

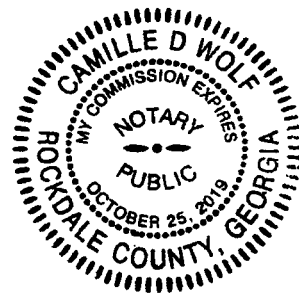
Sworn to and subscribed before me,

this 18th day of August, 2016.



Notary Public

My Commission Expires:



4-19-69

IN THE SUPERIOR COURT OF FULTON COUNTY

STATE OF GEORGIA

SAM G. DICKSON,

Plaintiff,

vs.

TODD LIDDELL, DREW LIDDELL,
JANE MORGAN BURKE and
BETTIE BRINSON ROGERS,
and all unknown persons who
are descended from any deceased
person interred in the Todd
family cemetery, located or
previously located in Land Lot
17 of the 14th District of Fulton
County, Georgia,

Defendants.

CIVIL ACTION FILE

NUMBER D-64781
516-591

FILED IN OFFICE
APR 18 1969
[Signature]
DEPUTY CLERK SUPERIOR COURT
FULTON COUNTY, GA

PETITION FOR PERMIT TO REMOVE AND REINTER POSSIBLE GRAVES

COMES NOW SAM G. DICKSON, Petitioner in the above matter and files this his petition, showing the Court as follows:

1.

This petition is brought under the provisions of Section 36-60-6 of the Official Code of Georgia seeking a permit for the relocation of possible gravesites located on property belonging to plaintiff and more fully described in legal description attached hereto as Exhibit A. Jurisdiction of this matter is vested in this Court by virtue of the provisions of Section 36-60-6 of the Official Code of Georgia giving jurisdiction over such action to the Superior Court of the county in which such burial place is located.

Blumberg No. 8119
EXHIBIT
A

10018 218



2.

The defendants herein Todd Liddell, Drew Liddell, Jane Morgan Burke and Mrs. L. C. Rogers are great-grandchildren of the late John C. Todd and are believed to be the descendants of persons whose gravesites were formerly located on the property of petitioner and which may possibly still be located thereon.

3.

In addition to the named defendants above, service of this petition should be had by publication on any person unknown who is a descendant of any person unknown who was previously buried or is buried on the property of the petitioner.

4.

The late John C. Todd, who died a resident of Fulton County, Georgia in 1925, created by deed and under his will a family cemetery measuring 55 by 110 feet located on the southeast portion property belonging to the petitioner.

5.

The will of John C. Todd further provided that the estate should purchase a monument to mark the graves of his parents Richard and Martha Todd who at that time were already buried on the property along with the testator's four sisters, brother and several other relatives and friends.

6.

In 1956 the graves located on the property were relocated to Eastview Cemetery. Permits for the relocation of the only two marked graves (the graves of Richard and Martha Todd) were issued and the oldest living family member by marriage (not blood kin to anyone buried or previously buried on the premises) has given an affidavit stating that all graves on the property were moved and that there are no more graves located on the property. A copy of the affidavit is attached as Exhibit B.

7.

Petitioner has had the land probed by the Georgia Vault Service, a company specializing in the location of possible gravesites.

8.

The Georgia Vault Service has indicated that it found approximately eleven spots which could possibly have been or be graves, all of said sites being located on the portion of the property originally described as constituting the family cemetery of the Todd family.

9.

The Georgia Vault Service is unable to determine if all of the gravesites have been moved or if any of the potential gravesites discovered were previously excavated in the previous movings which took place in 1956.

10.

Petitioner believes that there are no graves located at this time on the property.

11.

The Georgia Vault Service has stated to petitioner that the removal of a grave or graves of the antiquity of those previously located or possibly still located on the property is a legal fiction, due to the method of interment used in graves of this antiquity.

12.

However, due to allegations made by persons resident in the neighborhood that there are gravesites or former gravesites which have not been moved, out of an abundance of caution before developing the property petitioner has chosen to bring this petition to the Court seeking the Court's permission to excavate any possible gravesites and to remove any such graves as may be uncovered to the locations set out herein.

13.

In accordance with requirements of Section 36-60-6 of the Official Code of Georgia petitioner has made suitable arrangements for interment pursuant to an adequate plan to ensure proper reinterment as shown below.

14.

Petitioner proposes to erect a low brick wall enclosing a ten foot by ten foot parcel of land in the southeast corner of his property. A wrought iron fence shall be erected around the top of the brick enclosure with a gate to provide access to the site. A marker which previously marked the graves of Richard and Martha Todd prior to their removal to Eastview Cemetery will be relocated back onto the ten foot by ten foot enclosure. The marker is presently located neither at the new graves of Richard and Martha Todd nor on the property and is available to be relocated on the property. Any and all graves or possible graves located on the property will be placed on a concrete vault which will be buried beneath the relocated marker bearing the names of Richard and Martha Todd. A marker will also be erected on the property identifying the remains or possible remains contained in the concrete vault as being members of the Todd family, a pioneer family of Atlanta, and possibly those of persons unknown. The marker shall identify the five great-grandchildren who were born descended from John Todd and shall also recognize those individuals who have evidenced an interest in maintaining a memory of the significance of the site.

15.

The interment of the concrete vault will be accompanied by an appropriate memorial service to be conducted either by the clergyman serving Rock Springs Presbyterian Church or Sardis Methodist Church, two churches associated with the memory of the Todd family, with the

descendants of John Todd to be allowed to determine which of the clergymen they desire to be allowed to conduct the service. The living members of the Todd family will be invited to attend the service which will also be open to interested members of the public. Petitioner will dedicate a five foot wide perpetual easement of ingress and egress running along the east boundary of the property providing access to family members and the public to the enclosed site.

16.

A copy of this suit after its filing is being sent by petitioner to the four living great-grandchildren of John C. Todd. The fifth great-grandchild, William Morgan, died without children in 1988. Petitioner is asking the four living great-grandchildren to consent to the plan for the disinterment and re-interment of any possible graves or gravesites located on the property. Petitioner is also asking the four great-grandchildren of John Todd to acknowledge service of this suit. If and when the consents, and/or acknowledgements of service are received, petitioner will file them with the Court. If acknowledgements of service are not received within ten days of the mailing of the petition to the great-grandchildren, petitioner will make arrangements to have them served as provided by law.

17.

All costs for the relocation of the possible gravesites as set out above shall be borne by the petitioner.

WHEREFORE, petitioner prays this Court as follows:

(a) That this Court authorize service by publication upon any persons unknown descended from persons unknown buried or previously buried on the property;

(b) That the Court issue a rule nisi setting a time and date certain for the hearing of this petition;

(c) That the Court issue an order permitting petitioner to have the property probed and any gravesites or possible gravesites excavated and relocated pursuant to the plan set out in the petition.

^{18th} This ~~3rd~~ day of ^{April} ~~March~~, 1989.


SAM G. DICKSON, Attorney at Law

805 Church Street
Decatur, Georgia 30030
404/377-7335
Bar Number 221500

1989

Consent

IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

SAM G. DICKSON,

Plaintiff,

vs.

TODD LIDDELL, DREW LIDDELL,
JANE MORGAN BURKE and
BETTIE BRINSON ROGERS,
and all unknown persons who
are descended from any deceased
person interred in the Todd
family cemetery, located or
previously located in Land Lot
17 of the 14th District of Fulton
County, Georgia,

Defendants.

CIVIL ACTION FILE

NUMBER D-64781

APR 24 1989
[Signature]


CONSENT JUDGEMENT AS TO DEFENDANT DREW LIDDELL

The following shall be the consent judgment in the above styled action with respect to the plaintiff and the defendant Drew Liddell:

1.

Defendant consents to the Court issuing an order permitting the plaintiff to have the property that is the subject of this action probed and any gravesites or potential gravesites excavated and relocated pursuant to the plan set out fully in the petition of plaintiff.

This 24th day of APRIL, 1989.

Drew Liddell
DREW LIDDELL, "Defendant"


Blumberg No. 8179
EXHIBIT
B

10043 - 500

[Handwritten initials]
APR 02 1989

George Carter

IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

SAM G. DICKSON,
Plaintiff,
vs.
TODD LIDDELL, DREW LIDDELL,
JANE MORGAN BURKE and
BETTIE BRINSON ROGERS,
and all unknown persons who
are descended from any deceased
person interred in the Todd
family cemetery, located or
previously located in Land Lot
17 of the 14th District of Fulton
County, Georgia,
Defendants.

CIVIL ACTION FILE
NUMBER D-64781

[Handwritten signature]
APR - 6 1989


CONSENT JUDGEMENT AS TO DEFENDANT BETTIE BRINSON ROGERS

The following shall be the consent judgment in the above styled
action with respect to the plaintiff and the defendant Bettie Brinson
Rogers:

1.

Defendant consents to the Court issuing an order permitting the
plaintiff to have the property that is the subject of this action probed
and any gravesites or potential gravesites excavated and relocated
pursuant to the plan set out fully in the petition of plaintiff.

This 26 day of April, 1989.

Bettie Brinson Rogers
BETTIE BRINSON ROGERS, "Plaintiff"
10043 36


St. Louis -

4/26/89

IN THE SUPERIOR COURT OF FULTON COUNTY

STATE OF GEORGIA

SAM G. DICKSON,

Plaintiff,

vs.

TODD LIDDELL, DREW LIDDELL,
JANE MORGAN BURKE and
BETTIE BRINSON ROGERS,
and all unknown persons who
are descended from any deceased
person interred in the Todd
family cemetery, located or
previously located in Land Lot
17 of the 14th District of Fulton
County, Georgia,

Defendants.

CIVIL ACTION FILE

NUMBER D-64781

APR 26 1989
[Signature]

CONSENT JUDGEMENT AS TO DEFENDANT TODD LIDDELL

The following shall be the consent judgment in the above styled action with respect to the plaintiff and the defendant Todd Liddell:

1.

Defendant consents to the Court issuing an order permitting the plaintiff to have the property that is the subject of this action probed and any gravesites or potential gravesites excavated and relocated pursuant to the plan set out fully in the petition of plaintiff.

This 26th day of April, 1989.

BOOK 1835 PAGE 140

Todd Liddell
TODD LIDDELL, Defendant



IN THE SUPERIOR COURT OF FULTON COUNTY

STATE OF GEORGIA

SAM G. DICKSON,

Plaintiff,

vs.

TODD LIDDELL, DREW LIDDELL,
JANE MORGAN BURKE and
BETTIE BRINSON ROGERS,
and all unknown persons who
are descended from any deceased
person interred in the Todd
family cemetery, located or
previously located in Land Lot
17 of the 14th District of Fulton
County, Georgia,

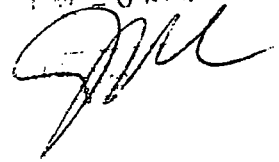
Defendants.

CIVIL ACTION FILE

NUMBER

D-64781

MAY 8 1989



CONSENT JUDGEMENT AS TO DEFENDANT JANE MORGAN BURKE

The following shall be the consent judgment in the above styled
action with respect to the plaintiff and the defendant Jane Morgan Burke:

1.

Defendant consents to the Court issuing an order permitting the
plaintiff to have the property that is the subject of this action probed
and any gravesites or potential gravesites excavated and relocated
pursuant to the plan set out fully in the petition of plaintiff.

This 27th day of April, 1989.

BOOK 1885 FILE 141

Margaret Christopher

Jane Morgan Burke
JANE MORGAN BURKE, "Defendant"



lm
1989

IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

SAM G. DICKSON, :
 :
 Plaintiff :
 :
 vs. :
 :
 TODD, LIDDELL, DREW LIDDELL, :
 JANE MORGAN BURKE and :
 BETTIE BRINSON ROGERS :
 and all unknown persons who :
 are descended from any :
 deceased person interred :
 in the Todd family cemetery, :
 located or previously :
 located in Land Lot 17 of :
 the 14th District of Fulton :
 County, Georgia, :
 :
 Defendants :

CIVIL ACTION FILE
NUMBER D-64781

ED IN
JUN 25 1989
CLERK
FULTON COUNTY

ORDER

The foregoing petition came on for hearing before the Court on the 26th day of June, 1989.

It appearing that the named defendants, being the descendants of the Todd family, have consented to the granting of the petition and that no person unknown descended from any person previously or presently interred on the premises has objected to the granting of the petition, the petition is hereby granted.

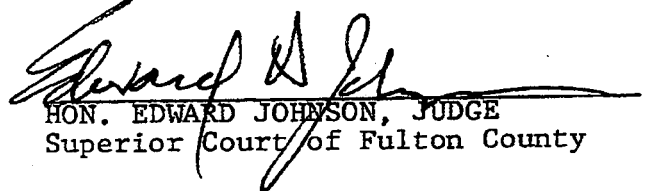
Permission is hereby granted to petitioner to have the property probed and any graves or possible graves removed and reinterred according to the plan set out in the petition.

Blumberg No. 8119
EXHIBIT
C

BOOK 1829



SO ORDERED this ^{3d}~~26th~~ day of ^{July}~~June~~, 1989.


HON. EDWARD JOHNSON, JUDGE
Superior Court of Fulton County

Book 166 Page 95
Entered 4-20-90 *Antoniello*
Deputy Clerk

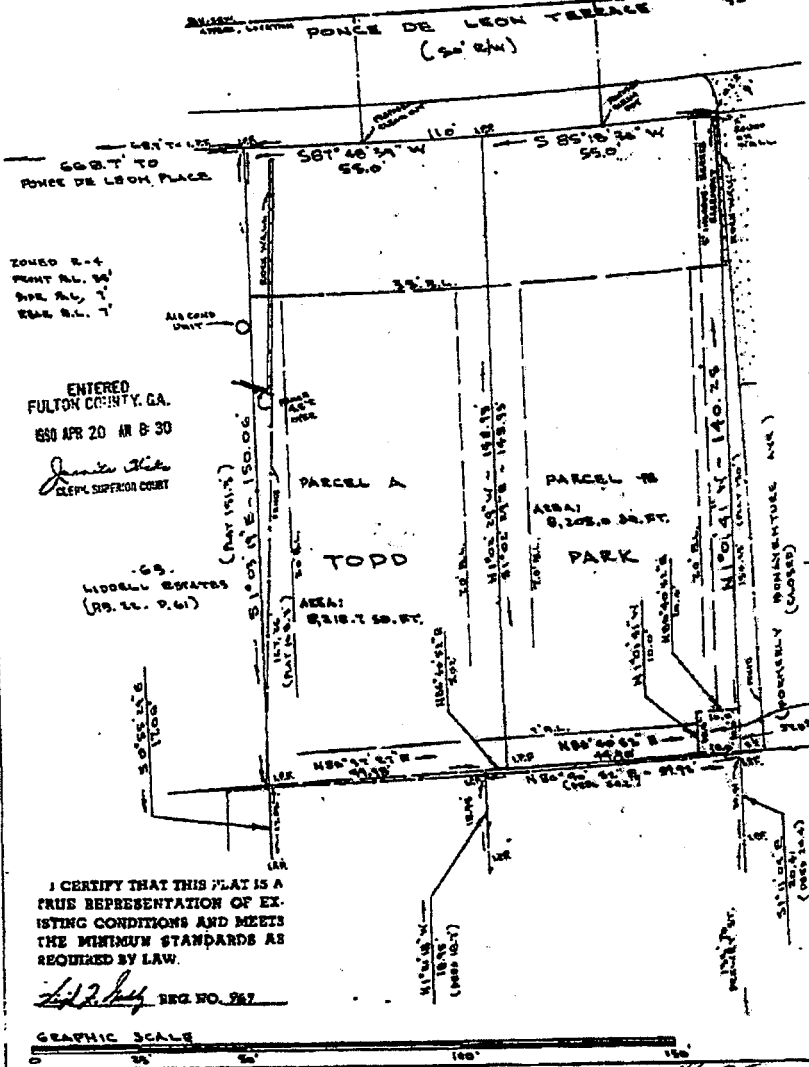
NOTE:
THIS PROPERTY IS NOT LOCATED
WITHIN A DESIGNATED SLA,
SLASH HAZARD AREA.

Declarer or surveyor acknowledges: "I do hereby certify that
this plat is true and correct and was prepared from an actual survey
of the property made under my supervision.
W. *Joseph J. Gandy*
Registered C.E. No. _____
Registered Georgia Land
Surveyor's No. 908
Date: APRIL 2, 1990

Owner's Acknowledgment:
"State of Georgia
(City of Atlanta)
The owner of the land shown on this plat and whose name is subscribed
therein, and its person or through a duly authorized agent, acknowledges
that this plat was made from an actual survey and dedicates to the use
of the public forever, all streets, parts, drains, easements and public
places thereon shown for the purpose and consideration therein ex-
pressed.
Deed this 2th Day of April, 1990 Done at
Sam G. Dickson

Drainage Statement:
Storm drains shown on this plan is necessary for proper drainage of the
subdivision. The City of Atlanta will not be held responsible for
erosion or overflow caused by the storm drains or natural drainage unless
they are responsible for extensions of storm drains.

NOTE:
OF LOT PERCENTAGE AND LOT AREA REDUCTIONS
APPROVED 11-3-87 W-87-188



ENTERED
FULTON COUNTY, GA.
660 APR 20 AM 8:30
Janice S. Hite
CLERK SUPERIOR COURT

-G2-
LADDELL ESTATES
(RD. 22, P. 61)

I CERTIFY THAT THIS PLAT IS A
TRUE REPRESENTATION OF EX-
ISTING CONDITIONS AND MEETS
THE MINIMUM STANDARDS AS
REQUIRED BY LAW.

L. J. Gandy REG. NO. 907



This subdivision development plan is approved subject to the
owner and/or developer providing the following improvements ap-
proved by the Commissioner of Public Works.

- 1. Sanitary Sewers
- 2. Street Improvements including curb, gutter, and paving.
- 3. Drainage and storm water control, catch basins, and other
drainage facilities deemed necessary.
- 4. Stormwater

These conditions are a part of the approval of this development
This 18 day of April 1990
Joseph J. Gandy
Commissioner
Department of Public Works

BUREAU OF PLANNING
Approved by
William J. Kennedy
April 19, 1990

SURVEY FOR
SAM G. DICKSON
LAND LOT 17 - 14TH DISTRICT
FULTON COUNTY, GEORGIA
CITY OF ATLANTA
SCHEMATIC UPDATE: APRIL 2, 1990
DATE: APRIL 2, 1990
SCALE: 1" = 20'
JOB NO. 840440
PLAN SCALE OF 1" = 200'
DRAFTED BY
VIRGIL R. GARDY & ASSOCIATES
1146 CLAYBANK AVE.
DECATUR, GA. 30030 678-4184



Blumberg No. 5119
EXHIBIT
D



Lawyers Title Insurance Corporation

DECATUR BRANCH OFFICE

WARRANTY DEED

STATE OF GEORGIA COUNTY OF COBB

THIS INDENTURE, Made the _____ day of November, in the year one thousand nine hundred ninety-two, between

SAM G. DICKSON

of the County of Fulton, and State of Georgia, as party or parties of the first part, hereinafter called Grantor, and

JANE F. GOODWIN A/K/A JANE FENNICK GOODWIN

as party or parties of the second part, hereinafter called Grantee (the words "Grantor" and "Grantee" to include their respective heirs, successors and assigns where the context requires or permits).

WITNESSETH that: Grantor, for and in consideration of the sum of Ten dollars and other good and valuable consideration \$10.00 et al) DOLLARS in hand paid at and before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, has granted, bargained, sold, aliened, conveyed and confirmed, and by these presents does grant, bargain, sell, alien, convey and confirm unto the said Grantee,

*and exchange of property

All that tract or parcel of land lying and being in Land Lot 17 of the 14th District of Fulton County, Georgia, fronting on the south side of Ponce de Leon Terrace and being known as Lot B of Todd Park as per plat of survey for Sam G. Dickson by Virgil Gaddy and Associates, Surveyors, dated April 28, 1984, revised April 6, 1990, recorded in Plat Book 166, Page 95, Fulton County, Georgia, Records to which reference is made for a full description of said property, the same being a vacant lot.

Fulton County, Georgia
Real Estate Transfer Tax
Paid \$ 62.50
Date 11-17-92
JUANITA RECKS
Clerk, Superior Court
By: [Signature]
Deputy Clerk

GEORGIA, FULTON COUNTY
FILED AND RECORDED
92 NOV 17 AM 8:30
JUANITA RECKS
CLERK, SUPERIOR COURT

TO HAVE AND TO HOLD the said tract or parcel of land, with all and singular the rights, members and appurtenances thereof, to the same being, belonging, or in anywise appertaining, to the only proper use, benefit and behoof of the said Grantee forever in FEE SIMPLE.

AND THE SAID Grantor will warrant and forever defend the right and title to the above described property unto the said Grantee against the claims of all persons whomsoever.

IN WITNESS WHEREOF, the Grantor has signed and sealed this deed, the day and year above written.

Signed, sealed and delivered in presence of:

[Signature] (Seal)
[Signature] (Seal)
SAM G. DICKSON (Seal)

Notary Public, Cobb County, Georgia
My Commission Expires March 2, 1993
Form 100 (Rev. 10/91)
038-0-010-2000



BOOK 15993 PAGE 251





Lawyers Title Insurance Corporation

DECATUR BRANCH OFFICE

WARRANTY DEED

STATE OF GEORGIA COUNTY OF COBB

THIS INDENTURE, Made the _____ day of November, in the year one thousand nine hundred ninety-two, between

JANE F. GOODWIN A/K/A JANE FENWICK GOODWIN of the County of Fulton, and State of Georgia, as party or parties of the first part, hereinafter called Grantor, and

IN TOWN ENTERPRISES, INC.

as party or parties of the second part, hereinafter called Grantee (the words "Grantor" and "Grantee" to include their respective heirs, successors and assigns where the context requires or permits).

WITNESSETH that: Grantor, for and in consideration of the sum of Ten dollars and other good and valuable consideration \$10.00 at all DOLLARS in hand paid at and before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, has granted, bargained, sold, aliened, conveyed and confirmed, and by these presents does grant, bargain, sell, alien, convey and confirm unto the said Grantee,

All that tract or parcel of land lying and being in Land Lot 17 of the 14th District of Fulton County, Georgia, fronting on the south side of Ponce de Leon Terrace and being known as Lot B of Todd Park as per plat of survey for Sam G. Dickson by Virgil Gaddy and Associates, Surveyors, dated April 28, 1984, revised April 6, 1990, recorded in Plat Book 166, Page 95, Fulton County, Georgia, Records to which reference is made for a full description of said property, the same being a vacant lot.

Fulton County, Georgia
Real Estate Transfer Tax
Paid \$ 6.277
Date 11-17-92
JUANITA HICKS
Clerk, Superior Court
by: [Signature]
Deputy Clerk

GEORGIA, FULTON COUNTY
FILED & RECORDED
92 NOV 17 AM 8:30
JUANITA HICKS
CLERK, SUPERIOR COURT

TO HAVE AND TO HOLD the said tract or parcel of land, with all and singular the rights, members and appurtenances thereof, to the same being, belonging, or in anywise appertaining, to the only proper use, benefit and behoof of the said Grantee forever in FEE SIMPLE.

AND THE SAID Grantor will warrant and forever defend the right and title to the above described property unto the said Grantee against the claims of all persons whomsoever.

IN WITNESS WHEREOF, the Grantor has signed and sealed this deed, the day and year above written.

Signed, sealed and delivered in presence of:

[Signature] [Signature] (Seal)
JANE F. GOODWIN A/K/A (Seal)
JANE FENWICK GOODWIN (Seal)
[Signature] (Seal)

Form 108 (Rev. 10/85) Notary Public, Cobb County, Georgia
028 • 010 0800 My Commission Expires March 3, 1996

BOOK 15993 PAGE 252



GEORGIA, FULTON COUNTY
FILED AND RECORDED

93 OCT 16 AM 9:36

WARRANTY DEED

STATE OF Georgia

JUANITA NICKS
WINNETT COUNTY CLERK SUPERIOR COURT

THIS INDENTURE, made the 8th day of October, 1993, between

In Town Enterprises, Inc.

, hereinafter called "Grantor/s", and

Holland Construction Co., Inc.

, hereinafter called "Grantee/s" (the

words "Grantor/s" and "Grantee/s" to include their respective heirs, successors and assigns where the context requires or permits).

WITNESSETH: That Grantor/s, for and in consideration of The sum of Ten Dollars and no/100 (\$10.00) and other valuable considerations receipt of which is hereby acknowledged has/have granted, sold, transferred and conveyed, and by these presents does/do grant, sell, transfer and convey unto Grantee/s,

All that tract and parcel of land lying and being in Land Lot 17 of the 14th District of Fulton County, Georgia, fronting on the south side of Ponce de Leon Terrace and being know as Lot B of Todd Park as per plat of survey for Sam C. Dickson by Virgil Gaddy and Associates, Surveyors, dated April 28, 1984, revised April 6, 1990, recorded in Plat Book 166, Page 95 Fulton County, Georgia records to which reference is made for a full description of said property, the same being a vacant lot.

This conveyance is made subject to all covenants, easements and restrictions of record.

Fulton County, Georgia
Notary Public
No. 6700
Exp. 10/17/93
Pub. Notary
Club, 1000 Peachtree
St.
Dorothy Clark
Notary Clerk

TO HAVE AND TO HOLD, in fee simple. And Grantor/s will warrant and forever defend the right and title to said premises unto Grantee/s against the lawful claims of all persons whatsoever.



IN WITNESS WHEREOF, Grantor/s' hand and seal have been hereunto affixed, the day and year first above written.

Signed, sealed and delivered in the presence of:

[Signature]

[Signature]
TITLE

(SEAL) Affix Corporate Seal

WITNESS
[Signature]

NOTARY PUBLIC

(SEAL)

Notary Public, Winnetts County, Georgia
My Commission Expires July 19, 1993



Re: 2-6 / 98

201173367025



STATE OF GEORGIA

DEKALB County

THIS INDENTURE, made the 15th day of April, in the year one thousand nine hundred NINETY FOUR, between Holland Construction Co., Inc.

of the County of Fulton, and State of Georgia, as party or parties of the first part, hereinafter called Grantor, and Joseph S. Trachtenberg and Wendy I. Silver

as party or parties of the second part, hereinafter called Grantee (the words "Grantor" and "Grantee" to include their respective heirs, successors and assigns where the context requires or permits).

WITNESSETH: That Grantor for and in consideration of the sum of TEN AND NO/100 DOLLARS (\$10.00) AND OTHER GOOD AND VALUABLE CONSIDERATION, in hand paid at and before the sealing and delivery of these presents, the receipts whereof is hereby acknowledged, has granted, bargained, sold, aliened, conveyed and confirmed, and by these presents does grant, bargain, sell, alien, convey and confirm unto the said Grantee,

All that tract or parcel of land lying and being in Land Lot 17, 14th District, Fulton County, Georgia, being Lot B, Todd Park, as per plat recorded in Plat Book 166, Page 96, Fulton County Records, which plat is hereby referred to and made a part of this description, being property known as 797 Ronce De Leon trace according to the present system of numbering houses in said county, as more particularly shown on that certain plat of survey prepared by Georgia Land Surveying Co., Inc., dated April 8, 1994.

Fulton County, Georgia
Book 18260 Page 124
Date 8-2-94
Blanchette HICKS
Clerk, Superior Court

GEORGIA, FULTON COUNTY
FILED AND RECORDED
94 MAY - 2 AM & 30
JUANITA HICKS
CLERK, SUPERIOR COURT

THIS CONVEYANCE is made subject to all zoning ordinances, easements and restrictions of record affecting said described property.

TO HAVE AND TO HOLD the said described property, with all and singular the rights, members and appurtenances thereof, to the same being, belonging, or in anywise appertaining, to the only proper use, benefit and behoof of the said Grantee forever in FEE SIMPLE.

AND THE SAID Grantor will warrant and forever defend the right and title to the said described property unto the said Grantee against the claims of all persons whomsoever.

IN WITNESS WHEREOF, the Grantor has signed and sealed this deed, the day and year above written.

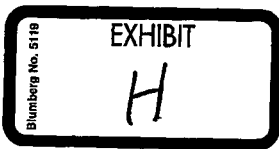
Signed, sealed and delivered in the presence of:

BOOK 18260 PAGE 124

CORP. SEAL

Notary Public
My commission expires:
EXPRES
GEORGIA
JULY 9, 1995

Holland Construction Co., Inc. (Seal)
Wendy I. Silver (Seal)



Deed Book 53984 Pg 302
Filed and Recorded Jul-11-2014 06:30am
2014-0211604
Real Estate Transfer Tax \$824.00
Cathelene Robinson
Clerk of Superior Court
Fulton County, Georgia

Return to:
NEEL ROBINSON & STAFFORD, LLC
5555 GLENRIDGE CONNECTOR, SUITE 400
ATLANTA, GA 30342

File No.: 14058108

STATE OF GEORGIA
COUNTY OF FULTON

LIMITED WARRANTY DEED

THIS INDENTURE, made on 7th day of July, 2014, between
JOSEPH S. TRACHTENBERG and WENDY I. SILVER

(hereinafter referred to as "Grantors") and

CHARLES B. COOK, JR. and JASON A. KING

AS JOINT TENANTS WITH RIGHTS OF SURVIVORSHIP

(hereinafter referred to as "Grantees"), the words "Grantors" and "Grantees" to include the heirs, executors, legal representatives, successors and assigns of said parties where the context requires or permits;

WITNESSETH:

THAT Grantors, for and in consideration of the sum of TEN DOLLARS (\$10.00) AND OTHER GOOD AND VALUABLE CONSIDERATIONS, in hand paid, at and before the sealing and delivery of these presents, the receipt of which is hereby acknowledged by Grantors, has granted, bargained, sold and conveyed, and by these presents does grant, bargain, sell and convey unto Grantees,

All that tract or parcel of land lying and being in Land Lot 17 of the 14th District, Fulton County, Georgia, being Lot B, Todd Park Subdivision, as per plat recorded in Plat Book 166, Page 95, Fulton County, Georgia Records, which plat is incorporated herein by reference and made a part of this description. Said property being known as 797 PONCE DE LEON TERRACE, NE according to the present system of numbering property in Fulton County, Georgia.

This Deed is given subject to all easements, restrictions and encumbrances of record.

TOGETHER WITH all and singular the rights, members and appurtenances thereto, to the same being, belonging, or in anywise appertaining (hereinafter collectively referred to as the "Premises").

TO HAVE AND TO HOLD the Premises, to the only proper use, benefit and behoof of Grantee, forever, in FEE SIMPLE, and Grantor will warrant and forever defend the right and title to the Premises unto Grantee against the claims of all person claiming by, through or under Grantor, but not otherwise.

IN WITNESS WHEREOF, Grantor has executed this instrument under seal.

Signed, sealed and delivered in the presence of:

Unofficial Witness

Notary Public

My Commission expires:



JOSEPH S. TRACHTENBERG (Seal)

WENDY I. SILVER (Seal)

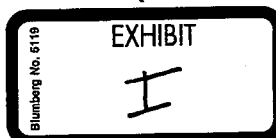
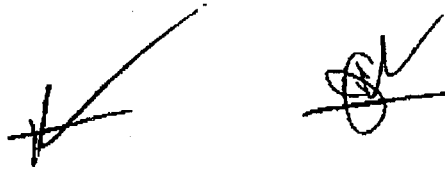


EXHIBIT "A"

LEGAL DESCRIPTION

All that tract or parcel of land lying and being in Land Lot 17 of the 14th District, Fulton County, Georgia, being Lot B, Todd Park Subdivision, as per plat recorded in Plat Book 166, Page 95, Fulton County, Georgia Records, which plat is incorporated herein by reference and made a part of this description. Said property being known as 797 PONCE DE LEON TERRACE, NE according to the present system of numbering property in Fulton County, Georgia.

Two handwritten signatures or initials are present in the center of the page. The one on the left consists of a few sharp, intersecting lines. The one on the right is more complex, featuring a circular scribble with a horizontal line through it and a checkmark-like stroke.

Daniel Moriarty

From: Jason King <jking575@gmail.com>
Sent: Thursday, December 17, 2015 9:26 PM
To: Daniel Moriarty
Subject: Re: Agreement

Daniel,

I'm writing to acknowledge receipt of your message.

Jason King
Sent from my iPhone

> On Dec 16, 2015, at 3:35 PM, Daniel Moriarty <dmoriarty@greensapp.com> wrote:

>

> Jason,

>

> We have a deal. The VHCA will not pursue any litigation concerning the easement in your backyard. In return, you will post a sign on your driveway fence identifying the monument, warning the public of your pool, and asking the public to only visit during daylight hours. The VHCA will design the sign at its expense, and will provide a draft of the sign for your approval before it is posted. You will also add the VHCA as an additional insured to your homeowner's policy. The VHCA will need documentation showing that is an additional insured for its records.

>

> I'm glad we were able to resolve this without litigation. Let me know if you have questions. I'll be in touch after the holidays with a rough draft of the sign.

>

> Best regards,

> Dan



Jason A. King
797 Ponce de Leon Terrace
Atlanta, Georgia 30306
Telephone: (678) 641-6204
Email: jking575@gmail.com

March 30, 2016

Daniel J. Moriarty, Attorney at Law
Green & Sapp, LLP
750 Hammond Dr., Building 8
Atlanta, GA 30328

Dear Mr. Moriarty:

I am writing to acknowledge receipt of your letter dated March 29, 2016, and the attached complaint regarding the easement that the Virginia Highland Civic Association (VHCA) claims provides for ingress and egress to the southwest corner of my residential property located at 797 Ponce de Leon Terrace. In this correspondence you indicate that the VHCA is prepared to file the enclosed lawsuit against me in relation to this matter.

I am surprised to receive this threat of a lawsuit regarding the easement on my property, because you and the VHCA are well aware that we have already previously reached an agreement regarding the easement in November 2015. As a reminder, pasted below is a copy of your e-mail to me dated 12/16/15 and my return e-mail to you on 12/17/15.

Jason King <jking575@gmail.com>

12/17/15

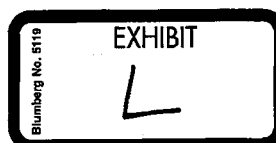
■
Daniel |
■
me

Daniel,

I'm writing to acknowledge receipt of your message.

Jason King
Sent from my iPhone

> On Dec 16, 2015, at 3:35 PM, Daniel Moriarty <dmoriarty@greensapp.com> wrote:
>
> Jason,
>



VHCA re: my home
March 30, 2016
Page 2

> We have a deal. The VHCA will not pursue any litigation concerning the easement in your backyard. In return, you will post a sign on your driveway fence identifying the monument, warning the public of your pool, and asking the public to only visit during daylight hours. The VHCA will design the sign at its expense, and will provide a draft of the sign for your approval before it is posted. You will also add the VHCA as an additional insured to your homeowner's policy. The VHCA will need documentation showing that is an additional insured for its records.

>

> I'm glad we were able to resolve this without litigation. Let me know if you have questions. I'll be in touch after the holidays with a rough draft of the sign.

>

> Best regards,

> Dan

As you can see, this agreement specifies that "*The VHCA will not pursue any litigation concerning the easement in your backyard*" [emphasis added] in return for me posting a sign designed by the VHCA and adding the VHCA as an additional insured to my homeowner's policy. Please find attached with this letter a copy of my homeowner's insurance policy which documents that I have added the VHCA added as an additional insured entity. To date, I have not received the sign that was to be provided by the VHCA.

This agreement constitutes a written contract, which prohibits the VHCA from filing a lawsuit against me regarding the easement in my backyard. I have fulfilled my end of the agreement and I expect the VHCA to fulfill its obligations under this written contract. If the VHCA unilaterally fails to comply with this agreement, this represents a breach of contract. If necessary, I am prepared to enforce this written contract in court.

Sincerely,



Jason A. King
Owner

**IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA**

DEBORA LIDDELL, BLAKE LIDDELL :
and VIRGINIA-HIGHLAND CIVIC :
ASSOCIATION, INC., :
 : FILE NO. 2016CV279090
Plaintiffs, :
v. :
 :
JASON KING and CHARLES B. COOK, :
JR., :
 :
Defendants, :
 :
_____ :

ACKNOWLEDGMENT OF SERVICE AND WAIVER OF PROCESS

Pursuant to OCGA § 9-10-73, the undersigned counsel acknowledges that he was served with physical copies of the documents listed below on August 22, 2016 and that he is authorized to accept service and waive process on behalf of Defendants Jason King and Charles B. Cook, Jr. as of such date.

1. Verified Complaint for Damages and Equitable Relief, Including Preliminary Injunction, with attached Exhibits A-L, and Verification of Lola Carlisle (the "Complaint");
2. Fulton County General Civil Case Filing Information Form (Non-Domestic);
3. Plaintiffs' First Discovery Requests to Defendants;
4. Notice of Deposition for Jason King; and
5. Notice of Deposition for Charles B. Cook, Jr.

Accordingly, Defendants shall not be required to file an answer or other responsive pleading in response to the Complaint until September 21, 2016.

This 25th day of August, 2016.

WILLIAMS TEUSINK LLC

/s / David Metzger
David J. Metzger, Esq.
Georgia Bar No.363534
Counsel for Defendants

309 Sycamore Street
Decatur, Georgia 30030
404-373-9590 (Telephone)
404-378-6049 (Facsimile)

**IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA**

DEBORA LIDDELL, BLAKE LIDDELL	:	
and VIRGINIA-HIGHLAND CIVIC	:	
ASSOCIATION, INC.,	:	
	:	FILE NO. 2016CV279090
Plaintiffs,	:	
v.	:	
	:	
JASON KING and CHARLES B. COOK,	:	
JR.,	:	
	:	
Defendants,	:	
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CERTIFICATE OF SERVICE

This is to certify that I have this day served counsel in the foregoing matter with a copy of the foregoing pleading through the Odyssey eFile service to:

Daniel Moriarity
Green, Sapp & Moriarity, LLP
790 Hammond Drive
Building 8
Suite 200
Atlanta, GA 30328

This the 25th day of August, 2016.

WILLIAMS TEUSINK LLC

/s/ David Metzger
David J. Metzger, Esq.
Georgia Bar No.363534
Counsel for Defendants

309 Sycamore Street
Decatur, Georgia 30030
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**IN THE SUPERIOR COURT OF FULTON COUNTY
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DEBORA LIDDELL, BLAKE LIDDELL
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JR.,

Defendants,

FILE NO. 2016CV279090

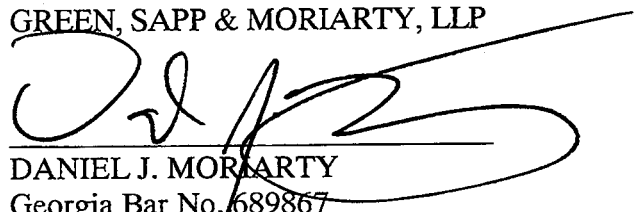
NOTICE OF DEPOSITION

To: Jason King
797 Ponce de Leon Terrace
Atlanta, Georgia 30306

Please take notice that Plaintiffs' counsel will take your discovery deposition at the office of GREEN, SAPP & MORIARTY, LLP, 750 Hammond Drive, Building 8, Suite 200, Atlanta, Georgia 30328 at 10:00 a.m. on October 13, 2016. The deposition will be taken down and transcribed by a court reporter.

This 18 day of August, 2016.

GREEN, SAPP & MORIARTY, LLP


DANIEL J. MORIARTY

Georgia Bar No. 689867

Counsel for Plaintiffs

750 Hammond Drive
Building 8, Suite 200
Atlanta, Georgia 30328
770-690-8001 (Telephone)
770-690-8206 (Facsimile)

IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

DEBORA LIDDELL, BLAKE LIDDELL
and VIRGINIA-HIGHLAND CIVIC
ASSOCIATION, INC.,

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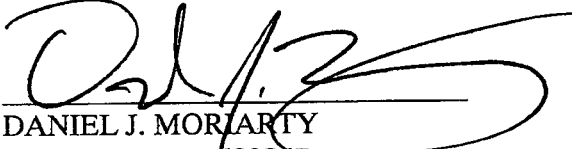
NOTICE OF DEPOSITION

To: Charles B. Cook, Jr.
797 Ponce de Leon Terrace
Atlanta, Georgia 30306

Please take notice that Plaintiffs' counsel will take your discovery deposition at the office of GREEN, SAPP & MORIARTY, LLP, 750 Hammond Drive, Building 8, Suite 200, Atlanta, Georgia 30328 at 10:00 a.m. on October 19, 2016. The deposition will be taken down and transcribed by a court reporter.

This 18 day of August, 2016.

GREEN, SAPP & MORIARTY, LLP


DANIEL J. MORIARTY
Georgia Bar No. 689867
Counsel for Plaintiffs

750 Hammond Drive
Building 8, Suite 200
Atlanta, Georgia 30328
770-690-8001 (Telephone)
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