

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

Michael Brower,)
)
 COMPLAINANT,)
)
 v.) Case No. WC-2017-0207
)
 Branson Cedars Resort Utility)
 Company, LLC,)
)
 RESPONDENT.)

AFFIDAVIT OF MICHAEL HYAMS

STATE OF MISSOURI)
) ss.
 COUNTY OF GREENE)

The undersigned, Michael Hyams, being duly sworn, hereby denotes and says:

1. My name is Michael Hyams.
2. I am over the age of eighteen (18) and authorized to execute this Affidavit. I have personal knowledge of the matters contained herein.
3. I have been in real estate development for over twenty (20) years.
4. I am an agent of Branson Cedars Resort Utility Company, LLC, and am a custodian of records for Branson Cedars Resort Utility Company, LLC.
5. There is no doubt that the Brower structure at issue is a duplex, and the structure was constructed as such.
6. James A. Merciel, Jr., P.E., Missouri Public Service Commission, informed Branson Cedars Resort Utility Company, LLC that the Brower structure should be considered

two separate units in a correspondence sent on April 29, 2016, a true and accurate copy of which is attached hereto as "Exhibit A."

7. The Brower structure has no internal access (such as a staircase) between the upper unit and lower unit, which is a sure sign of an owner intending on having the ability to rent out the upper unit and lower unit separately.

8. The upper unit of the Brower structure has four bedrooms, a kitchen, a living area, and a bathroom, while the lower unit of the Brower structure has four bedrooms, a kitchen, a living area, and a bathroom.

9. The upper unit and lower unit of the Brower structure have separate entrances.

10. The Brower structure was advertised that it could be rented out as two separate 4-bedroom units or one 8-bedroom unit.

11. Complainant named the upper unit "Owls Nest Cabin."

12. Complainant named the lower unit "Fox Den Cabin."

13. Complainant named the combined units "Cedar Point Cabin."

14. Mr. Brower said he intended on renting out the upper unit and lower unit separately; it was not until Mr. Brower was told that he would have two utility bills did he assert that he would only rent out the Brower structure as one big unit.

15. Although Complainant has alleged that there are no longer any intentions to rent out the lower unit and upper unit separately, I am aware of no restrictions that would prevent Complainant from renting out the lower unit and upper unit separately after this Complaint has been adjudicated.

16. I have been told by individuals staying at the Brower structure that they were allowed to rent out half of the Brower structure.

17. I have attached as "Exhibit B" a true and accurate copy of the correspondence between Mr. Brower and Branson Cedars Resort Utility Company, LLC.

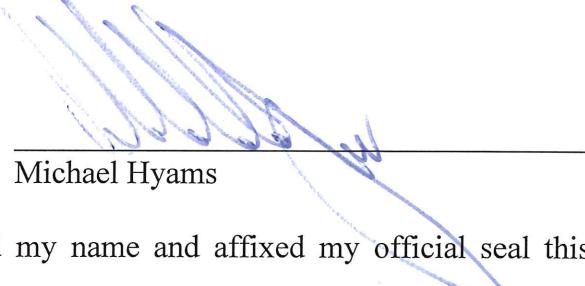
18. In an email dated October 16, 2015 between Branson Cedars Resort Utility Company, LLC and the Browers, a true and accurate copy of which is attached hereto as "Exhibit C," the Browers were informed that the unit the Browers were constructing would need to have a meter installed.

19. In the Complaint, the Browers state that they have "pledged" with Branson Cedars Resort Utility Company, LLC to install a meter to charge for usage, but the Browers have failed to pay anything to reimburse Branson Cedars Resort Utility Company, LLC for the money it incurred in hooking up the Brower structure so it can have water service.

20. A true and accurate copy of the invoice for the cost paid by Branson Cedars Resort Utility Company, LLC to hook up the Brower structure so it can have water service is attached hereto as "Exhibit D," and Complainant has refused to reimburse Respondent.

21. The facts contained herein are true and accurate to the best of my knowledge and belief.

Further affiant sayeth naught.



Michael Hyams

14th In witness whereof, I hereunto subscribed my name and affixed my official seal this day of August, 2017.



D. Stevens
Notary Public

My Commission Expires: 05/10/19

-----Original Message-----

From: Patsy Kay O'Kieffe <tishakay@aol.com>
To: Laurie Turner <laurie@bransoncedarsresort.com>
Sent: Fri, Apr 29, 2016 10:33 am
Subject: Fwd: New Cabin

The Brower cabin will be considers two bills. Please put copy of this in their file
Thanks

Patsy K. O'Kieffe
The Tranquility Group LLC
769 state hwy 86
Ridgedale, MO. 65739
417-365-9424
Tishakay@aol.com

Begin forwarded message:

From: "Merciel, James" <james.merciel@psc.mo.gov>
Date: April 29, 2016 at 10:25:19 AM CDT
To: "Patsy Kay O'Kieffe" <tishakay@aol.com>
Cc: Michael Hyams <mhyams.sanctuary@gmail.com>
Subject: RE: New Cabin

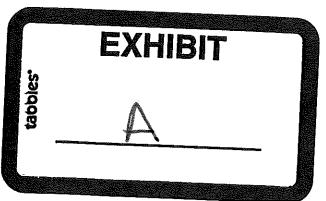
Hello Patsy. Based on this email, and also our telephone conversation this morning, it sounds like this building is essentially a duplex, consisting of two rental units. As such, each rental unit is subject to the residential flat monthly rate for water and sewer service.

Rule 1 R on Sheet 8 of the water tariff defines a unit, as follows:

R. The word "UNIT" or "LIVING UNIT" shall be used herein to define the premises or property of a single water consumer, whether or not that consumer is the Customer. It shall pertain to any building whether multi-tenant or single occupancy, residential or commercial, or owned or leased. Each mobile home in a mobile home park and each rental unit of a multi-tenant rental property are considered as separate units for each single family or firm occupying same as a residence or place of business.

If this building has one water service connection, then each unit is still considered a separate customer for flat rates. If one water service connection is involved then come the day that meters might be installed for residential customers and metered rates designed, the owner of the building could be considered to be one customer, picking up water use of both living units through one metered connection.

I hope this helps.



James A. Merciel, Jr., P.E.
Missouri Public Service Commission
PO Box 360
Jefferson City, MO 65109
573 751-3027
website is: psc.mo.gov

-----Original Message-----

From: Patsy Kay O'Kieffe [<mailto:tishakay@aol.com>]
Sent: Friday, April 29, 2016 9:30 AM
To: Merciel, James
Cc: Michael Hyams
Subject: New Cabin

Jim

Good morning

We have an owner(the Browers) who has built a cabin and we need some guidance. Again we are faced with how to bill them.

This cabin is definitely 2 units, it has 2 separate entrances (one on the lower level and one on the upper level). There are no stairs inside to connect the upper and lower units. They will be renting it out as 2 separate 4 bedroom units or someone can rent it as one unit.

They will be renting it as

Owls Nest cabin - upper 4 bedroom

Fox Den Cabin - lower 4 bedroom

And if they rent all of it they will call it Cedar Point Cabin

We believe this is two units and according to our tariff two bills, but given the last situation we would like some guidance Thanks

Patsy K. O'Kieffe
The Tranquility Group LLC
769 state hwy 86
Ridgedale, MO. 65739
417-365-9424
Tishakay@aol.com

Begin forwarded message:

From: Darla Brower <logcabinrentals@gmail.com>

Date: June 6, 2016 at 3:50:53 PM CDT

To: "Patsy O'Kieffe" <tishakay@aol.com>

Subject: Re: water bill

Patsy,

I sincerely apologized once, I will not do it again. If you can't accept an apology there is nothing else I can do. I was extremely agitated when you called the other day. Not at you nor anything necessarily to do with what is going on in Branson. I am back in LA. trying to deal with a lot of issues, and trying to split time between Branson and Monroe is wearing on me. Not your problem and I get that. Bad timing and I went off. I apologized 3 times. Deal with it.

EXHIBIT

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B

As far as Missouri law and Jim Merciel, I will deal with them. You keep saying they are the ones pushing this. Really? They seem to know a lot about my business. Wonder how they know so much considering it never came from me.

You wonder how I have helped y'all in the past? If you don't know then I guess I haven't done anything. You owe me absolutely nothing. Not now, not ever.

I am not threatening you. Period. I don't need to do anything nor would do anything to cause you to lose the resort. You are doing that all by yourself. You don't need any help.

Have you ever wondered why everyone, everyone, at some point turns friend to foe?

\$100 per month. Really? Is that what this is really all about? Or do you think just because my name is on a petition you have to create some vendetta. Just my take, but if you had approached the issue of rate increase a little differently way back when, the PSC would probably never be involved. Think about it. Instead of sending out notifications that "this is what we are going to do an y'all have no say about it" why not try a little diplomacy and ask peoples opinion. "We have a problem and we need y'alls help to come up with a solution. No, you do not have to do that, and no you shouldn't even have to do that, and no you wouldn't have to do that except nobody in the resort trust y'all and that might not even be your fault but IT IS WHAT IT IS.

We are all trying to run a business. We all win or we all lose together. Like it or not that's the way it is. You wear your feelings on your sleeve. You get way too emotional and you let your emotions affect your business decisions. Worse, you hold on to it and let your emotions come through in business communications. You can't do that and get what you want. We all have moments when emotion causes us do or say something we later regret. That's why being able to admit it and say I AM SORRY is an important part of our character. Being able to accept it and move on is also an important part of character.

You don't owe me anything. I don't owe you anything. Don't pat yourself on the back too hard. Non of the bookings in the resort are up do to anything you have or are doing. They are not down, and that's a good thing, and that probably is due to the great job y'all are doing to keep the place up. I commend your efforts. I even Thank You for your efforts. But, I will not say My business depends on your efforts, because it absolutely does not. We and the rest of the owners together will survive with or without you. The sooner you realize that, acknowledge it, and let the owners in the resort know that you desire their input, support, friendship, fellowship, and whatever else it takes to get them on your side, the less stress, headaches, lack of cooperation, and whatever else you truly want will happen. Do you have to do it? Nope. Should you have to do it? Don't Know. Probably not. But what I do know, if you continue down the same path, not caring if you have a friend or not, it will eventually destroy you.

How we move forward is up to you. The water thing will be decided based on what is right, what laws apply, and what the rules say. I do not nor have I ever considered y'all an adversary. My wish would be to keep it that way. Your call. I will continue to help when I can, and mind my own business when I can't. Period!

Mike Brower

On Mon, Jun 6, 2016 at 1:05 PM, Patsy O'Kieffe <tishakay@aol.com> wrote:

Mike

I am sending this email just to clarify the conversations we had on Thursday June 2, 2016.

I called you regarding your water bill out of courtesy to help clarify anything you might not understand. You proceeded to cut me off, scream at me, cuss at me and threaten that I would loose the resort. You also told me you would have Jim Merceils job and anyone else that got in your way. You threw f bombs at me, told me I wasn't allowed to speak, told me that you had no part in signing anything or anything to do with the water and sewer. I beg to differ your name is on the petition and you were with and discussing everything with the attorney your group hired at the meeting.

You also indicated that either myself, Mike or the PSC were trying to get in your pocket and you were not having it. Really over a \$100 a month water bill and this month you were only billed a partial month.

On the second phone call you continued to threaten that we loose the resort, How are you going to do this? You also suggested that I talk with my family and just drop the subject. You also told me to beware of the PSC and that you knew the law and have never used an attorney. You referred to a Missouri law on owner one bill, what law is that?

Mike you also stated how much you have done for Michael and I. Really??? I would be curious to know what. We have spent thousands of dollars to defend all of you against Valdez and none of you want to help pay to keep up the roads that your renters use! As far as the water and sewer we paid part of your water bill for five years and you threaten me?

All of you have reaped the rewards of our hard work on the resort. All of your bookings are up due to our hard work and not one of you has thanked us. Instead you threaten me and then tell me you love me and throw a half ass apology at me and to tell me it is just business. So no I will not accept an apology from a man who cussed at me, screamed at me, belittled me and threatened me.

Patsy Kasinger-O'Kieffe

--
Darla Brower

www.BransonVacationRentalCabins.com
darla@bransonvacationrentalcabins.com
318-680-2949 cell

--
Michael R. Hyams

COO/Partner
Tranquility Group, LLC
(417) 544-9051 office
(417) 689-1411 cell
mhyams.sanctuary@gmail.com

-----Original Message-----

From: Darla Brower <logcabinrentals@gmail.com>
To: Patsy O'Kieffe <tishakay@aol.com>
Sent: Thu, Apr 28, 2016 8:43 pm
Subject: Fwd: New construction

----- Forwarded message -----

From: <tishakay@gmail.com>
Date: Fri, Oct 16, 2015 at 4:12 AM
Subject: New construction
To: Mike and Darla Brower <logcabinrentals@gmail.com>, Michael Brower <mdbrown72@gmail.com>, darbro22@live.com
Cc: Michael Hyams <mhyams.sanctuary@gmail.com>

Darla

In following up with our conversation regarding the new cabin

We need a written request from the builder requesting that he or she be allowed to hook up to BCRU water and sewer. We need a set of plans that include the size of pipe he plans on putting in, shutoff locations, sewer location and what type of system. All work must be done by a licensed insured plumber and sewer specialist.

Since Tom is the Owner he will need to fill all this out and then once you purchase it from him we will need an additional application from you.

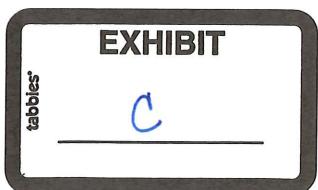
I did clarify and you only need one water meter on the building.

Thanks

Patsy

Sent from my iPhone

--
Darla Brower
www.BransonVacationRentalCabins.com
darla@bransonvacationrentalcabins.com
318-680-2949 cell



Kimberling City Plumbing, Inc.
Branson Plumbing
216 State Hwy DD
Branson West, MO 65737

Invoice

Date	Invoice #
5/13/2016	8964

Branson Cedars Resort
769 State Hwy. 86
Ridgedale, MO 65739



Terms	Due Date
	5/13/2016

Description	Amount
Completed Outside Sewer & Water for Lot 7 (see attached for details)	3,848.00

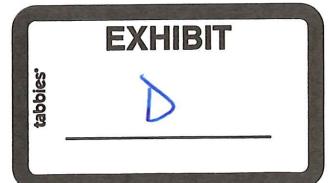
No warranty on drain cleaning or any sewer stoppage related service.

Any alteration or deviation from above specifications involving extra costs will be executed only upon written orders & will become an extra charge over & above previous work costs. Purchaser agrees to pay all costs of collection, including attorney's fees.

Thank you for your business.

Total	\$3,848.00
Payments/Credits	\$0.00
Balance Due	\$3,848.00

Phone #
417-272-6000



Kimberling City Plumbing, Inc.

Branson Plumbing, LLC.



Serving the Ozarks since 1970
Commercial – Residential
Licensed and Insured

kcp-plumbing.com

216 State Highway DD
Branson West, MO 65737
417-272-6000 Fax 417-272-6000

May 13, 2016

To: Branson Cedars Resorts
Attn: Michael
Re: Outside Sewer and Water to Lot 7

• Sewer and Water Materials.....	\$ 420.00
• Gravel for Ditches.....	\$ 320.00
• Backhoe - Dandy W. - 16 hours.....	\$ 1,920.00
• Plumber - Dave W. - 22 hours.....	<u>\$ 1,188.00</u>
Total due this invoice.....	\$ 3,848.00

Thank you for your business. Please call with any questions.

Sincerely,

Kent Brosseau
President
Kimberling City Plumbing