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Fax

Missouri Public
 Service Commission

To: *Allen & John Bockelman* From: *Charles E. Weedman, Jr.*

Fax: *779-4583*

Pages: *12*

Phone:

Date: *11-29-04*

Re: *Aquila*

Copy by Regular Mail?

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• Comments:

Harrisonville
Public Hearing Exhibit No. *5*
 Date *3/15/05* Case No. *EA-2005-0248*
 Reporter _____

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LAW FIRM

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November 24, 2004

VIA FACSIMILE (816-380-2976)
and U.S. MAILMr. Charles E. Weedman, Jr.
Crouch, Spangler & Douglas
117 S. Lexington
PO BOX 280
Harrisonville, MO 64701

Re: South Knight Road

Dear Chuck:

I was disappointed that the Bockelmans have refused my invitation to meet because I believe a face to face discussion would result in a resolution of this matter. In a last-ditch effort to stave off litigation, I'm forwarding you a letter proposal Aquila previously made to the Bockelmans. I am authorized to commit the same terms to the Bockelmans, AND to add the following additional items:

FOR A PRIVATE
ROAD?

- 1) \$9,000 for the use of the road (bringing the total sum for the Bockelmans to \$10,000);
- 2) a commitment by Aquila to not sell any property to the rock quarry operation; and
- 3) in a gesture that may be meaningful to Allan Bockelman, issuance of a written apology from the CEO or other high-ranking Aquila officer for aggravating statements made by Aquila employees or service providers to your clients.

Time will not allow Aquila to prolong these negotiations, unfortunately. If we are unable to reach an agreement by end of day Tuesday, the 30th, I fully anticipate the company will move forward with a lawsuit. Attached is a draft petition we are preparing, lest you consider this mere talk. It is difficult to imagine a court allowing a property owner to gate a road or driveway, no matter how you characterize it, that people have been using on a regular basis for decades. But even if the Bockelmans are to ultimately prevail, as their good counsel I am sure you have informed them that lawsuits are expensive and emotionally grueling experiences.


LAW FIRM

BLACKWELL SANDERS PEPER MARTIN
LLP

Mr. Charles E. Weedman, Jr.
November 24, 2004
Page 2

I'll keep my fingers crossed that a mutually-agreeable opportunity does not elude us, and look forward to hearing from you by Tuesday. Have a good Thanksgiving.

Sincerely,



Howard J. Barewin

HJB:dsw
Enclosures

cc: Leroy Lutes
Thomas LaBarge, Esq.
David Rein, Esq.

To The Bockelmans

10/28/04

It is my understanding that you have requested that we submit in writing our proposal for joint use of Knight Road, a Cass County Road, South of 203th Street. Please find listed below several suggestions on what Aquila will be willing to discuss on this road and the proposed substation driveway. All of these are based on the understanding that you and Aquila would jointly share the entire existing road-width along the portion of the road designated on the attached exhibit.

- Leave gate in place and co-padlock.
- Ensure that our contractors and Aquila personnel lock this gate upon leaving the site.
- Leave existing hedgerow and tree-line in place (except for necessary trimming).
- Payment of \$1,000 to you for past work and maintenance completed on this section of the road.
- Upon completion of the substation construction, bring road and gate to their *current conditions which would include placement of gravel back to its original depth*, and following construction Aquila will evenly divide cost of ongoing maintenance and repairs to road with Bockelmans.
- Establish a driveway into the substation site close to the SW corner of the substation site. This driveway will be constructed at an angle to minimize the exposure to the existing road.
- Limit post-construction use of the road to periodic (as opposed to daily) maintenance and repair visits.
- Aquila will not utilize more than a designated ten acres for substation purposes, and Aquila will not to utilize any portion of its property as a power plant.

We would appreciate your thoughts/comments.

Leroy Lutes

IN THE CIRCUIT COURT OF CASS COUNTY, MISSOURI
AT HARRISONVILLE

AQUILA, INC.,

Plaintiffs,

v.

Case No. _____

ALLEN D. BOCKELMAN AND
SHIRLEY J. BOCKELMAN
AS TRUSTEES FOR THE
ALLEN D. AND SHIRLEY J. BOCKELMAN
FAMILY TRUST

Serve at:

Defendants.

PETITION FOR DAMAGES AND FOR INJUNCTIVE RELIEF

Aquila, Inc. ("Aquila"), for its Petition for Damages and For Injunctive Relief states as follows:

Parties

1. Plaintiff Aquila is a Delaware corporation with its principal place of business at 20 West Ninth, Kansas City, Jackson County, Missouri. Aquila conducts business throughout Missouri, including Cass County.

2. Defendants Allen D. Bockelman and Shirley J. Bockelman as trustees for the Allen D. and Shirley J. Bockelman Family Trust ("Bockelmans") own real property in Cass County, Missouri and, upon information and belief, are residents of Cass County, Missouri.

Jurisdiction and Venue

3. This Court has original jurisdiction over this action pursuant to the Missouri Constitution, Article V, Sections 14 and 17.

4. The defendants are Missouri residents and service has been properly made pursuant to Mo. Rev. Stat. § 506.150.

5. Pursuant to Mo. Rev. Stat. § 508.010(1),(6), venue properly lies in the Circuit Court of Cass County, Missouri, as the torts alleged accrued in Cass County, and the defendants can be found in Jackson County.

6. Pursuant to Mo. Rev. Stat. § 508.030, venue properly lies in the Circuit Court of Cass County, Missouri, as the claims alleged concern real property located in Cass County.

Facts Common to All Counts

7. Aquila intends to build a substation and related power lines to improve the reliability of electrical service for its customers on property it has contracted to purchase in Cass County. The property is more particularly described in Exhibit A ("Aquila's Property").

8. South Knight Road adjoins Aquila's Property and currently provides access to and from Aquila's Property.

9. Aquila intends to use the road to construct, operate, and maintain the substation and related electrical power lines.

10. Defendants have gated South Knight Road, effectively blocking a primary access to Aquila's Property.

11. Despite demands that Defendants provide Aquila with the access to use South Knight Road, they have refused to provide any access.

COUNT I**(Interference With Use And Enjoyment Of Land)**

12. Plaintiff incorporates by reference paragraphs 1 through 11 of its petition, as if fully set forth herein.

13. Aquila is entitled to enjoy all rights commensurate with ownership of Aquila's Property.

14. Defendants have gated South Knight Road and prevented Aquila from obtaining access to and from Aquila's Property, thereby interfering with Aquila's use of the Property.

15. Aquila has suffered and incurred damages as a direct and proximate result of the actions of the Defendants.

COUNT II**(Trespass)**

16. Plaintiff incorporates by reference paragraphs 1 through 15 of its petition, as if fully set forth herein.

17. Defendants wrongfully entered onto Aquila's Property and installed and locked a gate on Aquila's Property.

18. Aquila did not give Defendants permission to enter onto Aquila's Property.

19. Aquila did not give Defendants permission to do any work on Aquila's Property.

20. By entering onto Aquila's Property and installing and locking a gate on Aquila's Property, Defendants interfered with Aquila's use and enjoyment of the Property.

21. Aquila has suffered and incurred damages as a direct and proximate result of the actions by Defendants.

COUNT III**(Easement by Prescription)**

22. Plaintiff incorporates by reference paragraphs 1 through 21 of its petition, as if fully set forth herein.

23. Aquila and its predecessor have continually used South Knight Road for over ten years.

24. For over ten years, Aquila's and its predecessor's use of South Knight Road has been open, notorious, and adverse to the interest currently claimed by the defendants.

25. By installing and locking a gate on South Knight Road, Defendants have blocked Aquila's access to South Knight Road and effectively blocked the only access to Aquila's Property.

26. Aquila is entitled to a declaration that Aquila owns an easement or such other right as will allow Aquila, its agents, invitees, and licensees to the complete and full right to use South Knight Road without interference from Defendants or others.

COUNT IV**(Public Nuisance)**

27. Plaintiff incorporates by reference paragraphs 1 through 26 of its petition, as if fully set forth herein.

28. Cass County is the owner of South Knight Road.

29. Cass County has not given Defendants permission to prevent the public from having full use of South Knight Road.

30. By entering onto Cass County's property and installing and locking a gate on South Knight Road, Defendants have unreasonably interfered with public safety, comfort, and convenience.

31. Aquila has been particularly and uniquely harmed by the Defendants' actions, which have effectively blocked the only access to Aquila's Property.

32. Aquila has suffered and incurred damages as a direct and proximate result of the actions by Defendants.

COUNT V

(Declaratory Relief Concerning Abandonment/Vacation)

33. Plaintiff incorporates by reference paragraphs 1 through 32 of its petition, as if fully set forth herein.

34. Cass County is the owner of South Knight Road.

35. Cass County has not given Defendants permission to prevent the public from having full use of South Knight Road.

36. Since the Defendants installed and locked a gate on South Knight Road, Cass County has not acted to vacate South Knight Road.

37. Aquila is entitled to a declaration that Defendants do not own and do not possess any ownership rights to South Knight Road and Defendants are not entitled to deny the public the use of South Knight Road.

COUNT VI

(Declaratory Relief Concerning Scope of Parties' Rights)

38. Plaintiff incorporates by reference paragraphs 1 through 37 of its petition, as if fully set forth herein.

39. If Cass County has vacated South Knight Road, Defendants have not obtained sole ownership of the property through which the road passes.

40. At most, Defendants may own only up to the centerline of the road adjacent to their property.

41. If Cass County has vacated South Knight Road, the previous owner of Aquila's Property also obtained ownership of the road up to the centerline of the road adjacent to Aquila's Property.

42. Therefore, if Cass County has vacated South Knight Road, when Aquila purchased Aquila's Property, it became the owner of the road up to the centerline of South Knight Road adjacent to Aquila's Property.

43. Aquila is entitled to a declaration that, in the event Cass County vacated South Knight Road, Defendants did not become the sole owners of the road and Aquila now owns the half of South Knight Road adjacent to Aquila's Property up to the road's centerline.

COUNT VII

(Declaratory Relief as to Aquila's Equitable Rights)

44. Plaintiff incorporates by reference paragraphs 1 through 43 of its petition, as if fully set forth herein.

45. The only effective access to Aquila's Property is through the use South Knight Road.

46. Therefore, Aquila has the right to use South Knight Road by necessity and by implication.

47. In addition, Aquila's use of South Knight Road and that of its predecessors establish Aquila's right to continued use because such use was open, notorious, adverse for a period of ten years.

48. Aquila is entitled to a declaration that Aquila owns an easement or such other right as will allow Aquila, its agents, invitees, and licensees to the complete and full right to use South Knight Road without interference from Defendants or others.

WHEREFORE, Aquila prays that this Court issue:

- a. A Temporary Restraining Order, a Temporary Injunction, and a Permanent Injunction to require Defendants to immediately remove the lock and the gate from South Knight Road, to require Defendants to immediately repair any damage to the road caused by the installation or removal of such gate, and to prohibit Defendants from engaging in any activity that blocks or limits Aquila's right or ability to use South Knight Road.
- b. An Order declaring that Aquila, its agents, invitees, and licensee have the full and complete right to use South Knight Road, whether because Cass County continues to own the road, because Aquila owns that portion of the road adjacent to Aquila's Property up to the road's centerline, or because equity provides Aquila with an easement to use South Knight Road.
- c. An Order awarding Aquila the damages it suffered and incurred due to Defendants' wrongful interference with South Knight Road, together with punitive damages, costs, attorneys' fees, and such further relief that this Court deems just and proper.
- d. An Order awarding Aquila pre-judgment and post-judgment interest at the statutory rate from the earliest possible date through the date of collection, together with costs, attorneys' fees, and such further relief that this Court deems just and proper.

Respectfully submitted,

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Jason R. Scheiderer MO #53091
Blackwell Sanders Peper Martin LLP
4801 Main, Suite 1000
Kansas City, Missouri 64112
Telephone: (816) 983-8000
Facsimile: (816) 983-8080

Attorneys for Plaintiff Aquila, Inc.