



## AlaFile E-Notice

20-CV-2012-000079.00

Judge: HAROLD V. HUGHSTON, JR.

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# NOTICE OF ELECTRONIC FILING

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IN THE CIRCUIT COURT OF COLBERT COUNTY, ALABAMA

CLARA L HOWARD, ET AL VS CARL HOWARD, ET AL  
20-CV-2012-000079.00

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<b>CLARA L. HOWARD, ET AL</b>	*	<b>IN THE CIRCUIT COURT OF</b>
<b>PLAINTIFFS</b>	*	
<b>VS.</b>	*	<b>COLBERT COUNTY, ALABAMA</b>
<b>CARL HOWARD, ET AL</b>	*	
<b>DEFENDANTS</b>	*	<b>CASE NO.: CV-2012-000079.00</b>

**ORDER**

This action came before the Court November 21, 2013. The parties agreed and stipulated as to the interests of the joint owners of the property, that the property was incapable of division among the owners, that that the property was due to be sold for a division of its proceeds, and that Plaintiff's attorney was entitled to an attorney's fee of 10% of the gross sales proceeds.

The Court was asked to rule on two issues. First, the Court was to determine which auction company would conduct the auction of the property. The Plaintiffs submitted the written proposal of Auctions United, Inc. ("Auctions United") and the Court received testimony in support of same from Jim Givens, President of Auctions United. The proposal set forth the various methods to be employed by Auctions United in advertising the auction, including signs, brochures, newspaper advertising, and website advertising. The proposal further set forth the various duties of Auctions United in conducting an auction; including preparing the property for auction, drafting and recording curative title instruments or boundary line agreements, printing and announcing the terms of sale, conducting the auction under tent, auctioning of the property by a professional auctioneer, and assisting with closing. Jim Givens testified as to various auctions conducted by Auctions United in over 25 states and in particular to judicial sales in numerous counties in North Alabama.

The second issue requiring the Court's determination was Defendant Betty McCreary's requested permanent injunction prohibiting the hauling of timber across the shared easement route. The parties stipulated into evidence maps of the subject property along with property deeds and various affidavits. The evidence tends to establish that Betty McCreary's property is benefited by a written easement for ingress and egress across the subject property. It also establishes that timber historically was harvested from the subject property. The parties agreed that the subject property contained valuable timber and that the highest and best use of the property could not be realized without harvesting timber. The Defendant also asserted that he had investigated alternative access routes for timber hauling from the subject property, but currently none had been developed due to it being cost prohibitive, or permission was lacking from the current subject landholders. Also, Defendant initially sought to have the prospective timber company bear the expense of an alternate route to haul the timber. The Plaintiffs conceded that heavy utility trucks working along the road as well as timber hauling trucks had the potential to burst waterlines leading to McCreary's residence. The Plaintiffs offered affidavit testimony and oral testimony that the waterlines could be buried at a greater depth and at a reasonable cost.

Accordingly, the Court finds as follows:

1. That the property forming the subject matter of this action is described as follows:

Commence at a rock corner at the NW corner of Section 34, T-4-S, R-12-W, Colbert County, Alabama; thence run S 00 deg. 14' 00" W 1342.60'; thence run S 89 deg. 03' 00" E, 420.00' to the point of beginning; thence run S 89 deg. 03' 00" E 250.00'; thence run S 00 deg. 14' 00" W 210.00'; thence run S 89 deg. 03' 00" E 210.00; thence run N 00 deg. 14' 00" E 210.00'; thence run S 89 deg. 03' 00" E 1766.20'; thence run S 00 deg. 05' 22" E 1845.58'; thence run S 84 deg. 53' 31" W 114.20'; thence run N 82 deg. 36' 56" W 279.08' to a point on a Bluff; thence run along said bluff generally along the following chords S 42 deg. 43' 39" W 103.63'; thence S 46 deg. 19' 07" W 317.85'; Thence S 37 deg. 36' 17" W 80.60'; thence S 54 deg. 14' 25" W

133.25'; Thence S 12 deg. 54' 39" W 188.17'; thence S 00 deg. 41' 31" E 230.39'; Thence S 16 deg. 56' 14" W 337.30'; thence S 12 deg. 19' 30" E 213.70'; Thence S 13 deg. 28' 25" E 446.30'; thence S 58 deg. 37' 29" E 186.36'; Thence S 66 deg. 21' 59" E 173.28'; thence S 57 deg. 33' 45" E 77.64'; Thence S 43 deg. 48' 19" E 243.62'; thence run N 89 deg. 07' 31" W 2380.84'; thence run N 83 deg. 56' 49" W 1344.00'; thence run S 87 deg. 45' 37" W 1288.94'; thence run N 00 deg. 20' 25" E 2616.34'; thence run S 89 deg. 30' 47" E 2619.32'; thence run N 00 deg. 14' 00" E 292.60'; Thence run S 89 deg. 03' 00" E 210.00'; thence run N 00 deg. 14' 00" E 630.00'; thence run S 89 deg. 03' 00" E 210.00'; thence run N 00 deg. 14' 00" E 210.00'; thence continue N 00 deg. 14' 00" E along said line 210.00' to the point of beginning; Said herein described tract contains 354.8 acres, more or less, and is presumed to lie partly in the West ½ of Section 34 and partly in the East ½ of Section 33, all in T-4-S, R-12-W, Colbert County, Alabama subject to any easements or obligations of record.

2. That the ownership and respective interests of the parties in the property is as follows:

Clara L. Howard – 1/4

Michelle A. Graham – 1/44

Glenda Marks – 1/44

Carol Kimbrough – 1/44

Lisa Fleming – 1/44

Harold Howard – 1/44

Carl Howard – 1/44

Billy Howard – 1/44

E.D. Howard – 1/44

Earl Dean Howard – 1/44

Mike Howard – 1/44

Tim Howard – 1/44

Betty J. McCreary – 1/2

3. That the property can not be equitably divided or partitioned in kind between

the owners.

4. That Auctions United is hereby named as the auction company to conduct the judicial auction in this action.

5. Defendant Betty McCreary's requested permanent injunction is hereby denied.

Accordingly, it is therefore, ORDERED, ADJUDGED AND DECREED as follows:

A. That Auctions United is hereby named as the auction company to conduct the judicial auction in this action. That Auctions United will arrange the property for auction, undertake repairs and improvements to the property, re-flag the property corners from the existing survey that was completed on 09/19/2011 by E M Sparkman, Surveyor, negotiate any boundary line agreements or other curative title instruments for execution by the parties or the Clerk of this Court; and otherwise prepare the property in order for it to be auctioned at its highest and best price and pursuant to the written proposal filed with the Court. That Auctions United will sell the property at public auction for a division of the sales proceeds among the owners. The date and time of the sale and manner of offering the property shall be set by Auctions United.

B. That Auctions United is authorized to contract with a licensed contractor for the relocation, replacement or addition of four (4) new water lines in or along the side of the existing access road with the same diameter lines as the existing waterlines in the access roadway that currently serve the various dwellings and properties adjacent to the subject premises. Auctions United shall further contract for the waterlines to be installed with a minimum depth of 20 inches of cover. The new water lines shall be connected to the existing water lines near the existing

water meters at the edge of the existing access road and run to connect with any existing water lines that leave the road onto individual properties that they serve. Also, Auctions United is authorized to install one residential type water meter set to serve the subject property, install one 2 inch water line connecting to the new meter and ending on the subject property to be sold, and install one frost proof faucet on the property. All water lines shall be installed in the same ditch along the private roadway. Auctions United shall contract for a minimum of 2 inches of crushed stone at least 15 feet wide to be placed upon the length of the private roadway from the point said access road commences at the public road and extending to the subject premises. Auctions United is further authorized to undertake any such further repairs or remediation that it believes would be beneficial to the integrity and durability of the waterlines.

C. The change in nature and character of the subject easement from common ingress and egress to that of commercial harvesting of timber shall be of a limited duration. Upon the completion of the removal of the timber, the easement shall revert back to its original use for common ingress and egress.

D. Attorney J. David Dodd cause notice of such sale to be given to all parties; and that a Clerk's Notice of Sale be published once a week for at least three consecutive weeks prior to the day of sale in a newspaper of general circulation in Colbert County, Alabama.

E. That Attorney J. David Dodd, attorney for the Plaintiffs is awarded a fee for his services for the common benefit of all parties equal to ten percent of the total auction price.

F. That within 10 days of the auction, attorney J. David Dodd shall cause a Clerk's Report of Sale to be filed with the Court and serve a copy on each party or their counsel.

Any objection by a party to the auction or the auction price shall be filed with the Court within 10 days of the filing of the Clerk's Report of Sale. If no objection is filed, the Court will confirm the auction.

G. From the total auction proceeds, the closing attorney shall distribute the following:

i. Auctions United Inc. – reimbursement for all expenses associated with the waterlines and surfacing the access road, any expense in repairing or improving the property for auction and ten percent buyer's premium.

ii. Scruggs, Dodd & Brisendine Attorneys, P.A. -- reimbursement of filing and service costs, publication costs, recording costs, reimbursement for abstractor's expense and attorney fees equal to ten percent of the total auction price.

iii. Circuit Clerk – a judicial sales commission equal to 1% of the auction price.

iv. Parties – balance of the auction proceeds based upon their respective ownership interests.

v. Betty McCreary - Mrs. McCreary's proceeds will be adjusted to reflect a share based upon the respective value of the proceeds prior to deducting the reimbursements associated with improving the waterlines and surfacing the access road, i.e. Mrs. McCreary's proceeds will be excepted from contribution to improve the easement, as this requirement to improve the easement is an accommodation for the more graduated use and encumbrance of her property for the purpose of harvesting timber, therefore it would not be equitable to require that she share in the expense of improving the easement.

Done this 10<sup>th</sup> day of February, 2014.

  
CIRCUIT JUDGE