

BULKY DOCUMENT

(FILED ON PAPER – ENTIRE DOCUMENT EXCEEDS 100 PAGES)

Proceeding No.	92059671
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Filing Date	06/04/2015
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Part	1 of	1
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92059671

TTAB

LAWSON AND SILEK, P.L.C.

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POST OFFICE BOX 2740
WINCHESTER, VA 22604
TELEPHONE: (540) 665-0050
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THOMAS MOORE LAWSON • TLAWSON@LSPLC.COM

June 3, 2015

M. Catherine Faint, Esquire
Interlocutory Attorney
United States Patent and Trademark Office
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313

Re: Rich Bluff LLC v. Diane Ashby
Cancellation No. 9205967¹
Our File No. 1302.001



U.S. Patent & TMO/TM Mail Rpt Dt: #11

Dear Ms. Faint:

Please be advised that I have been retained as counsel by Rich Bluff LLC (“Petitioner”) to represent it in the above-referenced matter against Diane Ashby (“Ashby”). Pursuant to the Trademark Trial and Appeal Board Manual of Procedure § 114.03, please accept this letter as our notice of appearance on behalf of Rich Bluff LLC for any further proceedings in the above-mentioned Petition for Cancellation.

I am in receipt of the Order from the Trademark Trial and Appeal Board (the “Board”) dated May 4, 2015 which requested a copy of the pleadings from the civil action. Pursuant to Trademark Rule § 2.117(a), enclosed please find copies of those pleadings from the civil suits (Case No. CL14-268 and Case No. CL14-384) and a pending criminal suit against Ashby’s husband, Michael Ashby (Case No. 14CR-1291) in the Circuit Court of the City of Winchester, Virginia. Additionally, please note that the pleadings provided to the Board by Ashby on May 22, 2015 are not complete, and only contain a small portion of the pleadings in the above matters.

Most importantly, I attach for your reference, a copy of the written lease (“Lease”) between Bessie M. Glover Trust and Diane’s Diner, L.L.C. along with the amendment to the same which provides that the name “Amherst Diner” was owned by the Petitioner and leased to Ashby. The Lease was terminated effective June 30, 2014.

The Lease is very important because it governs the relationship between the parties in these Cancellation proceedings and we believe speaks directly to the issue that is before the Board. Said Lease provides that the name “Amherst Diner” was and is owned by the Petitioner and during the term of the Lease was leased to Ashby. As a matter of law, at the termination of

M. Catherine Faint, Esquire
June 3, 2015
Page 2

the Lease, Ashby lost all rights to use, not only the premises and restaurant, but also the name "Amherst Diner."

For background purposes, the Amherst Diner was both built and given its name in 1958 by Robert Glover. Mr. Glover was the owner of the Amherst Diner until it was conveyed to the Bessie M. Glover Trust, of which both Robert and Bessie Glover are trustees, on July 8, 2003. Robert and Bessie Glover are husband and wife. In April 2007, Robert and Bessie Glover created Rich Bluff LLC. Shortly thereafter, on July 31, 2007, the Lease was assigned by the Bessie M. Glover Trust to Rich Bluff LLC. This historical chain of title is important to note because it proves that the Glovers have exercised ownership and control over the premises and name of the Amherst Diner since its inception to the present for 57+ years.

The Lease clearly provides that the name "Amherst Diner" was owned by the Petitioner and leased to Ashby. Among other things, the "Name and Address of the Premises" to be leased in the Lease begins with "Amherst Diner..." Lease ¶ 1(a). The "Premises" in the Lease are later described as "Amherst Diner, consisting of a brick diner building..." Lease, ¶ 1(f). The Lease subsequently states that "Tenant shall not change the name of the diner and restaurant without the prior written approval of the Landlord." Lease ¶ 14. Paragraph 29 of the Lease states that:

Upon expiration or sooner termination of the Lease Term, Tenant agrees...to quit and surrender the Premises, broom-clean, in good condition and repair...together with all...improvements, alterations, additions, fixtures and equipment at any time made or installed in, upon or to the interior or exterior of the Premises, all of which shall thereupon become the property of Landlord without any claim by Tenant therefor...

As discussed in greater detail in the attached pleadings, Ashby has conceded that she breached the Lease in various ways. As stated above, the Lease clearly provides that the name "Amherst Diner" was owned by the Bessie M. Glover Trust and leased to Ashby. Ashby has admitted that she filed a trademark application and obtained a trademark protecting the name "Amherst Diner." See Plea in Bar, Case No. CL14-384, ¶ 9. Such a filing is a breach of the terms of the Lease which only leased (not sold) to Ashby the right to use the name "Amherst Diner."

Ashby also admits breaching the Lease by continuing her use of the term "Amherst Diner" after the term of the Lease had ended. See generally Complaint and Motion for Summary Judgment, Case No. CL14-268, which define "Amherst Diner" as "Diane's Diner, LLC t/a Amherst Diner." As discussed above, Ashby was required under the Lease to surrender all the property upon the termination of the Lease and her continued use of the term "Amherst Diner" is in violation of that.

We have attached the criminal proceedings wherein the Defendant Michael Ashby did enter into a plea and agree to stipulate that the evidence is sufficient for findings of guilt to felony destruction of property. The Plea Agreement for Specific Sentence required restitution to the owner of the sign. The restitution was payable to the owner, Rich Bluff LLC and its insurance company, Erie, in the amount of \$2,769.04 which is to cover the damage to the

M. Catherine Faint, Esquire

June 3, 2015

Page 3

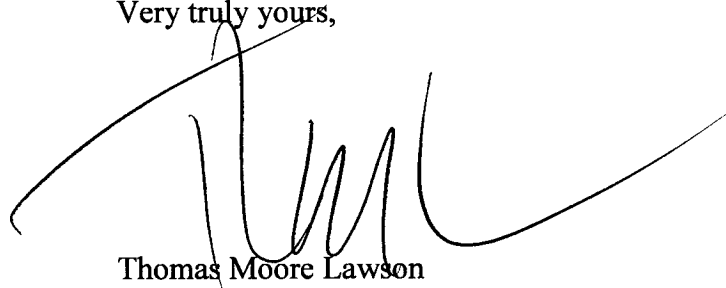
Amherst Diner sign. This is further evidence that Robert and Bessie Glover and their entity, Rich Bluff LLC, own and control not only the premises, but also the name "Amherst Diner."

Based on these and other admitted breaches, Petitioner is suing for damages and injunctive relief as set forth in the attached pleadings. Ashby's defenses (that the Court should read "commercially reasonable" terms into the Lease and the Lease was orally modified) have no basis under Virginia law, but more importantly give no support to any claim of ownership of the name "Amherst Diner."

In this matter, Petitioner is entitled to cancellation of the trademark "Amherst Diner" based on the admissions discussed above and specifically, the undisputed and admitted knowledge by Ashby that she was not the owner of the term "Amherst Diner" when she applied for the "Amherst Diner" trademark.

Thank you for your assistance and cooperation. If, after you review the pleadings, you have any questions, please do not hesitate to contact me.

Very truly yours,

A handwritten signature in black ink, appearing to read 'T. Moore Lawson', with a long horizontal flourish extending to the right.

Thomas Moore Lawson

TML:atd

Enclosures

cc: Rich Bluff LLC (w/out enclosures)
Diane Ashby (w/enclosures)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

RICH BLUFF LLC,

Petitioner,

v.

DIANE ASHBY

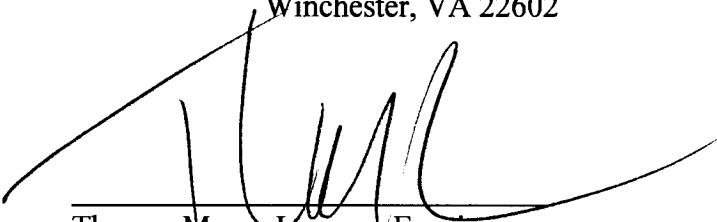
Respondent.

Cancellation No. 92059671

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and complete copy of the foregoing submission of pleadings from Case Nos. CL14-268, CL14-384 and 14CR-1291 has been served on Diane Ashby by mailing said copy on the 3rd day of June, 2015, via Certified First Class Mail, postage prepaid to:

Diane Ashby
109 Inca Trail
Winchester, VA 22602



Thomas Moore Lawson, Esquire
Virginia Bar No. 28332
Joshua E. Hummer, Esquire
Virginia Bar No. 71094
LAWSON AND SILEK, P.L.C.
P.O. Box 2740
Winchester, VA 22604
Telephone: (540) 665-0050
Facsimile: (540) 722-4051

Counsel for Rich Bluff LLC

VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF WINCHESTER

DIANE'S DINER, LLC,

Plaintiff,

v.

Case No. CL14-268

BESSIE M. GLOVER,

JURY TRIAL DEMANDED

SERVE: Bessie M. Glover
316 Ridge Avenue
Winchester, VA 22601

and

ROBERT GLOVER,

SERVE: Robert Glover
316 Ridge Avenue
Winchester, VA 22601

and

RICH BLUFF, LLC,

SERVE: R/A Bessie M. Glover,
Registered Agent
316 Ridge Avenue
Winchester, VA 22601

and

BESSIE M. GLOVER TRUST,

SERVE: Bessie M. Glover
316 Ridge Avenue
Winchester, VA 22601

Defendants.

: VALIDATE CASE PAPERS
: RCPT : 14000004854
: DATE : 05/21/14 TIME: 15:01
: CASE : 840CL14000268-00
: ACCT : DIANE'S DINER LLC
: AMT. : \$96.00

COMPLAINT FOR INJUNCTIVE RELIEF AND DAMAGES

COMES NOW, Plaintiff Diane's Diner, LLC, t/a Amherst Diner ("Amherst Diner"), by counsel, and for its Complaint avers as follows:

1. Amherst Diner is a Virginia limited liability company with its principal office in The City of Winchester, Virginia.
2. Diane Ashby ("Ashby") is the sole member of the Amherst Diner.
3. Amherst Diner owns and operates a restaurant located at 334 Amherst Street in the City of Winchester.
4. Upon information and belief, Bessie M. Glover ("Glover") is a Virginia resident, currently residing in the City of Winchester, Virginia.
5. Upon information and belief, Robert Glover ("Robert Glover") is a Virginia resident, currently residing in the City of Winchester, Virginia.
6. Upon information and belief, the Defendant Rich Bluff, LLC ("Rich Bluff") is a Virginia limited liability company with its principal office in the City of Winchester, Virginia.
7. Upon information and belief, the Glovers are the members/managers of Rich Bluff.
8. Upon information and belief Rich Bluff is the record owner of title of the property known as 334-338 Amherst Street, Tax Map Id No. 172-01-14 in the City of Winchester, Virginia ("Property"), where the Amherst Diner operates.
9. Upon information and belief, the Bessie M. Glover Trust ("Glover Trust") is the previous record owner of title of the Property.
10. Upon information and belief, the Glovers serve as Trustee(s) of the Glover

Trust.

11. In November 2006, the Amherst Diner began operating its restaurant at the Property.

12. Over the years, the Amherst Diner has grown as a popular local establishment, serving tens of thousands of customers each year.

13. When the Amherst Diner began operations in 2006, it had a written commercial lease agreement ("written commercial lease") with Glover.

14. After several years, the written commercial lease expired and was terminated by Glover.

15. After the expiration of the written commercial lease, the Defendants repudiated the previous lease and insisted on continuing on the basis of an oral lease.

16. Since that time, Defendants have refused to enter into a new written lease and have insisted on continuing to rent the Property to the Amherst Diner on the basis of their oral representations.

17. Glover told Diane Ashby that as long as the Amherst Diner continues to pay rent, they would give her at least six (6) months to one (1) year notice before any actions would be taken to evict the Amherst Diner.

18. The Amherst Diner has paid its monthly rent on time.

19. Because Amherst Diner has been at the same location for a number of years and built up a positive reputation in the community and because of the attendant costs and potential loss to relocate the restaurant, Amherst Diner understood that under their current lease agreement, it would have a year to relocate in the event that the lease was properly terminated.

20. In reliance upon this, the Amherst Diner has spent a considerable amount of

money on improvements to the Property.

21. A year-to-year lease or a lease requiring a year's notice before termination is commercially reasonable in the circumstances.

22. In addition, the Defendants agreed not to interfere with the Amherst Diner's business with its customers or employees during the tenancy.

23. However, on multiple occasions, Defendants have entered the restaurant and caused disruption by making loud complaints about the food within the hearing of other customers.

24. Likewise, on multiple occasions, Defendants have entered the restaurant and made injurious false statements about the condition of the Amherst Diner's operations within the hearing of customers and employees.

25. Additionally, Defendants have entered the restaurant and harassed employees of Amherst Diner and otherwise interfered with the operations of the restaurant.

26. On multiple occasions, Glover has interfered with the business of the Amherst Diner by directing that decorations be removed from the restaurant and by attempting to instruct the Amherst Diner and employees on the proper way to prepare food.

27. In addition, Defendants have unreasonably refused to consent to replacement booths and flooring by the Amherst Diner despite multiple requests.

28. On multiple occasions, Defendants have also threatened to shut down the business of the Amherst Diner.

29. In January 2014, a sewage main line at the Property collapsed.

30. Fixing the sewage main line was the responsibility of the Defendants.

31. Despite repeated requests to fix the sewage main lines in such a manner as to

not disrupt the business of the Amherst Diner, Defendants refused to act expeditiously, forcing the Amherst Diner to close for four (4) days and resulting in a significant loss of business for the Amherst Diner.

32. To date, the sewage main line has not been fully repaired.

33. On or about April 30, 2014, Glover, as Trustee of the Glover Trust and Manager of Rich Bluff, sent a letter to the Amherst Diner instructing the business to vacate the Property within thirty (30) days, or by May 31, 2014. A true and accurate copy of the April 30, 2014 letter is attached hereto as "Exhibit A" and incorporated herein by reference.

34. In addition, the Defendants represented to Ashby that they are willing to delay taking any action to attempt to evict the Amherst Diner from the Property to only unreasonably revoke the offer.

MOTION FOR INJUNCTIVE RELIEF

A. Temporary Injunction

35. The allegations set forth in Paragraphs 1 through 34 above are incorporated herein by reference as if set forth in their entirety.

36. Despite repeated demands to stop interfering with the business of the Amherst Diner, the Defendants continue to interfere and take actions injurious to the Amherst Diner.

37. Defendants' continued interference and threat to effectively shut down their business on May 31, 2014 presents an imminent and irreparable harm to the business.

38. Defendants do not risk suffering any harm with a temporary injunction to maintain the *status quo* until this case is adjudicated.

39. Amherst Diner is likely to succeed on the merits of its case because of the blatant and continual nature of the Defendants' interference with the business.

40. The public interest is served by granting a temporary injunction preventing Defendants from further interfering with Amherst Diner until the case can be adjudicated on the merits.

WHEREFORE, Plaintiff Diane's Diner, LLC, t/a Amherst Diner, respectfully moves this Honorable Court to grant a temporary injunction enjoining Defendants Bessie M. Glover, Robert Glover, Rich Bluff, LLC, and Bessie M. Glover Trust from any interference with the business, including any attempts to interfere with the occupancy at the Property, and grant Diane's Diner, LLC, t/a Amherst Diner such further relief as this Honorable Court may deem appropriate.

B. Permanent Injunction

41. The allegations set forth in Paragraphs 1 through 40 above are incorporated herein by reference as if set forth in their entirety.

42. There is no adequate remedy at law; in order to stop Defendants from interfering with the Amherst Diner's business they must be enjoined from doing so.

43. The balance of equities favor the Amherst Diner because the risk of loss to the Amherst Diner outweighs any potential loss to the Defendants.

44. A permanent injunction serves the public interest of preserving the rights of Amherst Diner to carry on the business without interference.

WHEREFORE, Plaintiff Diane's Diner, LLC, t/a Amherst Diner respectfully moves this Honorable Court to grant a permanent injunction enjoining Defendants Bessie M. Glover,

Robert Glover, Rich Bluff, LLC, and Bessie M. Glover Trust from any interference with the business, including any attempts to interfere with the occupancy at the Property, and grant Plaintiff Diane's Diner, LLC, t/a Amherst Diner such further relief as this Honorable Court may deem appropriate.

COUNT I - BREACH OF CONTRACT

45. The allegations set forth in Paragraphs 1 through 44 above are incorporated herein by reference as if set forth in their entirety.

46. The Amherst Diner and Defendants had an oral lease agreement whereby, *inter alia*, the Amherst Diner paid Three-Thousand, Five Hundred and 00/100 Dollars (\$3,500.00) per month.

47. In accordance with the oral lease, the Amherst Diner has paid each month's rent on time.

48. According to the terms of the lease agreement, Defendants had a year-to-year lease.

49. Pursuant to the terms of the lease agreement, Defendants are not allowed to interfere with the business of the Amherst Diner.

50. The Defendants have breached the terms of the lease agreement by interfering with the business of the Amherst Diner as set forth above and by attempting to terminate the lease agreement with only a month's notice.

51. As a result of Defendants' breach, the Amherst Diner has suffered considerable damages and is at risk to lose even more if the Defendants are permitted to continue.

WHEREFORE, Plaintiff Diane's Diner, LLC, t/a Amherst Diner, respectfully moves

this Honorable Court to grant a permanent injunction enjoining Defendants Bessie M. Glover, Robert Glover, Rich Bluff, LLC, and Bessie M. Glover Trust from any interference with the business, including any attempts to interfere with the occupancy at the Property, and grant judgment in favor of Plaintiff against Defendants in the amount of One Hundred Thousand and 00/100 Dollars (\$100,000.00), or any amount proven at trial, and grant Plaintiff Diane's Diner, LLC, t/a Amherst Diner such further relief as this Honorable Court may deem appropriate.

COUNT II – TORTIOUS INTERFERENCE WITH BUSINESS

52. The allegations set forth in Paragraphs 1 through 51 above are incorporated herein by reference as if set forth in their entirety.

53. The Amherst Diner has an ongoing business relationship with the hundreds of regular customers who regularly patronize the Amherst Diner and provide a significant economic benefit to the restaurant.

54. At all pertinent times, the Defendants have had knowledge of the many patrons and loyal customer base of the Amherst Diner as well as the mutual expectations that the Amherst Diner would continue to operate at the Property and resultant economic benefit.

55. There is a reasonable certainty that the Amherst Diner would continue in this profitable relationship with its customers absent Defendants' attempts to interfere.

56. Defendants have used and continue to use improper methods to interfere with the business of the Amherst Diner.

57. As a proximate and direct result of Defendants' interference, the Amherst Diner has suffered damages in the form of lost business and is at risk of losing all of its business if the Defendants are allowed to continue interfering with the business of the Amherst Diner.

WHEREFORE, Plaintiff Diane's Diner, LLC, t/a Amherst Diner, respectfully moves this Honorable Court to grant a permanent injunction enjoining Defendants Bessie M. Glover, Robert Glover, Rich Bluff, LLC, and Bessie M. Glover Trust from any interference with the business, including any attempts to interfere with the occupancy at the Property, award Plaintiff compensatory damages in the amount of One Hundred Thousand and 00/100 Dollars (\$100,000.00), or any other amount proven at trial, and grant Diane's Diner, LLC, t/a Amherst Diner such further relief as this Honorable Court may deem appropriate.

COUNT III – COMMON LAW CONSPIRACY

58. The allegations set forth in Paragraphs 1 through 57 above are incorporated herein by reference as if set forth in their entirety.

59. The Defendants have worked in combination for the purpose of willfully and maliciously injuring the Amherst Diner's business.

60. The Defendants' conspiracy has caused significant damages to the Amherst Diner's business and threatens to cause irreparable harm if allowed to continue.

61. The total amount of damages, including court costs and attorneys' fees will not be known until the date of trial in this matter, but will be submitted to the Court in due course.

WHEREFORE, Plaintiff Diane's Diner, LLC, t/a Amherst Diner, respectfully moves this Honorable Court to grant a permanent injunction enjoining Defendants Bessie M. Glover, Robert Glover, Rich Bluff, LLC, and Bessie M. Glover Trust from any interference with the business, including any attempts to interfere with the occupancy at the Property, award Plaintiff compensatory damages in the amount of One Hundred Thousand and 00/100 Dollars

(\$100,000.00), or any other amount proven at trial, punitive damages in the same amount and treble damages, and grant Diane's Diner, LLC, t/a Amherst Diner such further relief as this Honorable Court may deem appropriate.

COUNT IV – STATUTORY CONSPIRACY

62. The allegations set forth in Paragraphs 1 through 61 above are incorporated herein by reference as if set forth in their entirety.

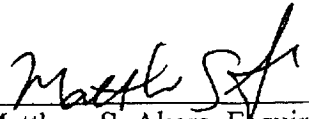
63. The Defendants have worked in combination for the purpose of willfully and maliciously injuring the Amherst Diner's business.

64. The Defendants' conspiracy has caused significant damages to the Amherst Diner's business and threatens to cause irreparable harm if allowed to continue.

65. The total amount of damages, including court costs and attorneys' fees will not be known until the date of trial in this matter, but will be submitted to the Court in due course.

WHEREFORE, Plaintiff Diane's Diner, LLC, t/a Amherst Diner, respectfully moves this Honorable Court to grant a permanent injunction enjoining Defendants Bessie M. Glover, Robert Glover, Rich Bluff, LLC, and Bessie M. Glover Trust from any interference with the business, including any attempts to interfere with the occupancy at the Property, award Plaintiff compensatory damages in the amount of One Hundred Thousand and 00/100 Dollars (\$100,000.00), or any other amount proven at trial, punitive damages in the same amount and treble damages, and grant Diane's Diner, LLC, t/a Amherst Diner such further relief as this Honorable Court may deem appropriate.

Respectfully Submitted,
DIANE'S DINER, LLC,
By Counsel.



Matthew S. Akers, Esquire
Virginia Bar No. 74615
McCARTHY & AKERS, P.L.C.
302 West Boscawen Street
Winchester, VA 22601
540-722-2181 Office
540-722-2381 Fax

Counsel for the Plaintiff

VIRGINIA:

IN THE CIRCUIT COURT OF CITY OF THE WINCHESTER

DIANE'S DINER, LLC,

Plaintiff,

v.

BESSIE M. GLOVER, *et al.*,

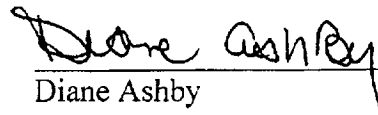
Defendants.

Case No. _____

AFFIDAVIT

STATE OF VIRGINIA;
CITY OF WINCHESTER; to-wit:

Before me, the undersigned Notary Public in and for the City and State aforesaid, personally appeared Diane Ashby, Owner of Diane's Diner, LLC, who, after being duly sworn, deposes and says that to the best of her knowledge and belief, all allegations alleged in the Complaint filed in this matter are true.


Diane Ashby

Taken, sworn and subscribed before me in my City and State aforesaid this 15th day of May, 2014.


Notary Public

My Commission Expires: 8/31/15

My Registration No.: 7095009

MICHELLE FARRAR
NOTARY PUBLIC
COMMONWEALTH OF VIRGINIA
REGISTRATION NO. 7095009
* I WAS COMMISSIONED AS MICHELLE OLIVE

Rich Bluff LLC
Bessie M Glover Trust
316 Ridge Avenue
Winchester, VA 22601

Phone: 540 667 4822
Email: r.glover1@verizon.net

April 30, 2014

Diane Ashby
Diane's Diner, LLC
109 Inca Trail
Winchester, VA 22602

Dear Diane,

As you are aware your lease calls for you to maintain the plumbing, electrical system, and our equipment having it serviced and repaired as needed.

After we notified you in March 2014 that we needed records for the servicing of the fire suppression system and hood cleaning you contacted the fire suppression people which led to the replacing of the old system. When it was tested this month it failed and had to be upgraded to meet the current fire code. We are not sure as to what caused it to fail the test since you hadn't had it tested on schedule.

We have learned that you were advised in April 2013, a year ago when the system was last tested, that it was not in compliance with the current fire code. You were also given a proposal for installing a new system. You did not tell us about this very important development and ignored this notice. When you were contacted in October 2013 to set a date for the required 6 month servicing of the suppression system you did not take their call although you were at the diner and never returned their call. You had to know it was important that you talk with them and schedule a testing.

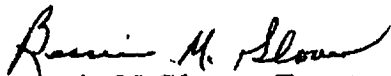
There has been maintenance issues that we choose to overlook, but not looking after the fire suppression system is just too serious for us to ignore. You had the responsibility of having the systems serviced every six months as required by the fire code and the insurance company and you should have told us about the notice you were given last April that the system was outdated. Had there been a fire in all likelihood our insurance company would not have covered the damage which may have consumed the entire building.

Because of your negligence regarding this issue as well as other instances where you did not comply with the terms of the lease regarding maintenance we are giving you thirty days' notice to vacate the building, until May 31, 2014, and expect you to abide by the terms of the lease in the process. If you find a prospect

to take over in your place, we will give consideration to such tenant, but we have no obligation to approve such person, but will give consideration to such person as continuation of service to the patrons and employees is obviously a concern. We are sorry that it has come to this, but the situation has become intolerable.

If you have any questions, please contact our attorney John Truban, telephone 540-667-0889.

Sincerely,


Bessie M Glover, Trustee and
Manager of Rich Bluff. LLC

COVER SHEET FOR FILING CIVIL ACTIONS
COMMONWEALTH OF VIRGINIA

Case No. CL14-268
(CLERK'S OFFICE USE ONLY)

The City of Winchester

Circuit Court

Diane's Diner, LLC

v./In re:

Bessie M. Glover, et al.

PLAINTIFF(S)

DEFENDANT(S)

I, the undersigned plaintiff defendant attorney for plaintiff defendant hereby notify the Clerk of Court that I am filing the following civil action. (Please indicate by checking box that most closely identifies the claim being asserted or relief sought.)

GENERAL CIVIL

Subsequent Actions

- Claim Impleading Third Party Defendant
 - Monetary Damages
 - No Monetary Damages
- Counterclaim
 - Monetary Damages
 - No Monetary Damages
- Cross Claim
- Interpleader
- Reinstatement (other than divorce or driving privileges)
- Removal of Case to Federal Court

Business & Contract

- Attachment
- Confessed Judgment
- Contract Action
- Contract Specific Performance
- Detinue
- Garnishment

Property

- Annexation
- Condemnation
- Ejectment
- Encumber/Sell Real Estate
- Enforce Vendor's Lien
- Escheatment
- Establish Boundaries
- Landlord/Tenant
 - Unlawful Detainer
- Mechanics Lien
- Partition
- Quiet Title
- Termination of Mineral Rights

Tort

- Asbestos Litigation
- Compromise Settlement
- Intentional Tort
- Medical Malpractice
- Motor Vehicle Tort
- Product Liability
- Wrongful Death
- Other General Tort Liability

ADMINISTRATIVE LAW

- Appeal/Judicial Review of Decision of (select one)
 - ABC Board
 - Board of Zoning
 - Compensation Board
 - DMV License Suspension
 - Employee Grievance Decision
 - Employment Commission
 - Local Government
 - Marine Resources Commission
 - School Board
 - Voter Registration
 - Other Administrative Appeal

DOMESTIC/FAMILY

- Adoption
 - Adoption - Foreign
- Adult Protection
- Annulment
 - Annulment - Counterclaim/Responsive Pleading
- Child Abuse and Neglect - Unfounded Complaint
- Civil Contempt
- Divorce (select one)
 - Complaint - Contested*
 - Complaint - Uncontested*
 - Counterclaim/Responsive Pleading
 - Reinstatement - Custody/Visitation/Support/Equitable Distribution
- Separate Maintenance
- Separate Maintenance Counterclaim

WRITS

- Certiorari
- Habeas Corpus
- Mandamus
- Prohibition
- Quo Warranto

PROBATE/WILLS AND TRUSTS

- Accounting
- Aid and Guidance
- Appointment (select one)
 - Guardian/Conservator
 - Standby Guardian/Conservator
- Trust (select one)
 - Impress/Declare
 - Reformation
- Will (select one)
 - Construe
 - Contested

MISCELLANEOUS

- Appointment (select one)
 - Church Trustee
 - Conservator of Peace
 - Marriage Celebrant
- Bond Forfeiture Appeal
- Declaratory Judgment
- Declare Death
- Driving Privileges (select one)
 - Reinstatement pursuant to § 46.2-427
 - Restoration - Habitual Offender or 3rd Offense
- Expungement
- Firearms Rights - Restoration
- Forfeiture of U.S. Currency
- Freedom of Information
- Injunction
- Interdiction
- Interrogatory
- Judgment Lien-Bill to Enforce
- Law Enforcement/Public Official Petition
- Name Change
- Referendum Elections
- Sever Order
- Taxes (select one)
 - Correct Erroneous State/Local
 - Delinquent
- Vehicle Confiscation
- Voting Rights - Restoration
- Other (please specify)

FILED
 WINCHESTER CIRCUIT COURT
 CLERK
 MAY 21 PM 2:57

Damages in the amount of \$ 100,000.00 are claimed.

May 21, 2014

DATE

Matthew Akers
 PLAINTIFF DEFENDANT ATTORNEY FOR PLAINTIFF
 DEFENDANT

Matthew S. Akers, Esquire

PRINT NAME

302 W. Boscawen St.

ADDRESS/TELEPHONE NUMBER OF SIGNATOR

Winchester, VA 22601 / 540-722-2181

*"Contested" divorce means any of the following matters are in dispute: grounds of divorce, spousal support and maintenance, child custody and/or visitation, child support, property distribution or debt allocation. An "Uncontested" divorce is filed on no fault grounds and none of the above issues are in dispute.

VIRGINIA:

IN THE CIRCUIT COURT OF CITY OF THE WINCHESTER

DIANE'S DINER, LLC,

Plaintiff,

v.

Case No. CL14-268

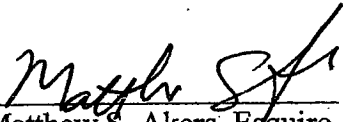
BESSIE M. GLOVER, *et al.*,

Defendants.

PRAECIPE

Please place the above matter on the Court's docket for a Hearing in the above matter on Thursday, May 29, 2014 at 9:00 a.m., or as soon thereafter as this matter may be heard, for argument on Plaintiff's request for Temporary Injunction against Defendants. Counsel estimates that 30 minutes will be required.

Respectfully Submitted,
DIANE'S DINER
By Counsel.


Matthew S. Akers, Esquire
Virginia Bar No. 74615
MC CARTHY & AKERS, P.L.C.
302 West Boscawen Street
Winchester, VA 22601
540-722-2181 Office
540-722-2381 Fax

Counsel for Plaintiff

FILED
WINCHESTER CIRCUIT COURT
TERRY H. WHITTLE, CLERK
14 MAY 22 PM 12:29

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 22nd day May, 2014, a true copy of the foregoing
Praecipe was mailed by first class mail, postage prepaid to:

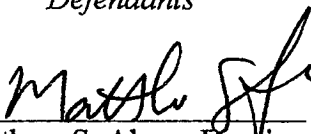
Bessie Glover
316 Ridge Avenue
Winchester, VA 22601

Robert Glover
316 Ridge Avenue
Winchester, VA 22601

Rich Bluff, LLC
c/o Bessie M. Glover, Registered Agent
316 Ridge Avenue
Winchester, VA 22601

Bessie M. Glover Trust
c/o Bessie Glover
316 Ridge Avenue
Winchester, VA 22601

Defendants


Matthew S. Akers, Esquire

VIRGINIA:

IN THE CIRCUIT COURT OF CITY OF THE WINCHESTER

DIANE'S DINER, LLC,

Plaintiff,

v.

BESSIE M. GLOVER, *et al.*,

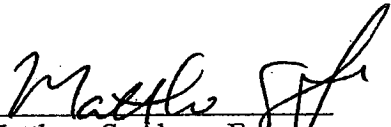
Defendants.

Case No. CL14-268

NOTICE

Please take notice that on Thursday, May 29, 2014, at 9:00 a.m., or as soon thereafter as this matter may be heard, Plaintiff will move the Court to grant Temporary Injunction against Defendants.

Respectfully Submitted,
DIANE'S DINER
By Counsel.


Matthew S. Akers, Esquire
Virginia Bar No. 74615
McCARTHY & AKERS, P.L.C.
302 West Boscawen Street
Winchester, VA 22601
540-722-2181 Office
540-722-2381 Fax

Counsel for Plaintiff

FILED
WINCHESTER CIRCUIT COURT
TERRY H. WHITTLE, CLERK
14 MAY 22 PM 12: 29

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 22nd day May, 2014, a true copy of the foregoing Notice was mailed by first class mail, postage prepaid to:

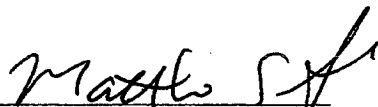
Bessie Glover
316 Ridge Avenue
Winchester, VA 22601

Robert Glover
316 Ridge Avenue
Winchester, VA 22601

Rich Bluff, LLC
c/o Bessie M. Glover, Registered Agent
316 Ridge Avenue
Winchester, VA 22601

Bessie M. Glover Trust
c/o Bessie Glover
316 Ridge Avenue
Winchester, VA 22601

Defendants


Matthew S. Akers, Esquire

VIRGINIA: IN THE CIRCUIT COURT FOR THE CITY OF WINCHESTER

DIANE'S DINER, LLC,
Plaintiff,

v.

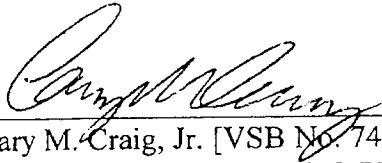
Civil Action No. CL14-268

BESSIE M. GLOVER, ET AL.,
Defendants.

APPEARANCE OF COUNSEL

The Clerk will please note the appearance of the firm of HARRISON & JOHNSTON, PLC,
and Cary M. Craig, Jr., as counsel for the Defendants in the above-styled matter.

**BESSIE M. GLOVER, ROBERT GLOVER,
RICH BLUFF LLC, AND BESSIE M. GLOVER
TRUST**
By Counsel



Cary M. Craig, Jr. [VSB No. 74056]
HARRISON & JOHNSTON, PLC
21 South Loudoun Street
Winchester, Virginia 22601
Tel. 540-667-1266
Fax 540-667-1312
craig@harrison-johnston.com
Counsel for Defendants

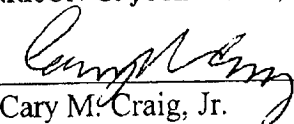
14 MAY 23 PM 3:17
CITY OF WINCHESTER
COURT CLERK

CERTIFICATE OF SERVICE

I hereby certify that I mailed and emailed a true copy of the foregoing Appearance of Counsel to the following on May 23, 2014.

Matthew S. Akers
McCARTHY & AKERS, P.L.C
302 West Boscawen Street
Winchester, Virginia 22601
makers@mccarthyakers.com

HARRISON & JOHNSTON, PLC

By: 
Cary M. Craig, Jr.

VIRGINIA:

IN THE CIRCUIT COURT OF CITY OF THE WINCHESTER

DIANE'S DINER, LLC,

Plaintiff,

v.

BESSIE M. GLOVER, *et al.*,

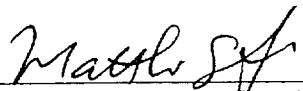
Defendants.

Case No. CL14-268

PRAECIPE AND NOTICE

Please withdraw the Hearing in the above matter from the Court's docket on Thursday, May 29, 2014 at 11:30 a.m. previously set for argument on Plaintiff's request for Temporary Injunction against Defendants.

Respectfully Submitted,
DIANE'S DINER, LLC
By Counsel.


Matthew S. Akers, Esquire
Virginia Bar No. 74615
McCARTHY & AKERS, P.L.C.
302 West Boscawen Street
Winchester, VA 22601
540-722-2181 Office
540-722-2381 Fax

Counsel for Plaintiff

14 MAY 29 PM 12:11

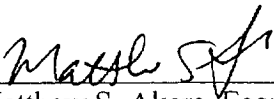
FILED
CITY OF THE WINCHESTER
CLERK OF COURT

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 28th day May, 2014, a true copy of the foregoing Praecipe and Notice was sent by electronic mail and mailed by first class mail, postage prepaid to:

Cary M. Craig, Jr., Esquire
Harrison & Johnston, PLC
21 South Loudoun Street
Winchester, Virginia 22601

Counsel for Defendants


Matthew S. Akers, Esquire

Suit put on hold

VIRGINIA: IN THE CIRCUIT COURT FOR THE CITY OF WINCHESTER

DIANE'S DINER, LLC,
Plaintiff,

v.

Civil Action No. CL14-268


BESSIE M. GLOVER, ET AL.,
Defendants.

**ORDER TO ENLARGE THE TIME FOR FILING
RESPONSIVE PLEADINGS BY DEFENDANT**

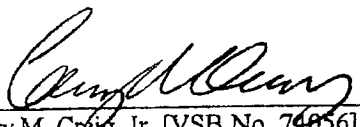
The parties in this action, by the undersigned counsel, moved this Court to extend the time within which responsive pleadings to the Complaint must be filed by the Defendants.

Wherefore, it is hereby ORDERED that the time within which the Defendants may file responsive pleadings is extended. It is further ORDERED that the Defendants shall file responsive pleadings to the Complaint within 21 days after the Plaintiff delivers written notice to Defendants' counsel requesting said responsive pleadings.

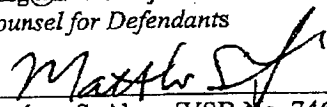
ENTERED this 29 day of May, 2014.



Judge, Circuit Court for Winchester City



Cary M. Craig, Jr. [VSB No. 74056]
HARRISON & JOHNSTON, PLC
21 South Loudoun Street
Winchester, Virginia 22601
Tel. 540-667-1266
Fax 540-667-1312
craig@harrison-johnston.com
Counsel for Defendants



Matthew S. Akers [VSB No. 74615]
McCARTHY & AKERS, P.L.C
302 West Boscawen Street
Winchester, Virginia 22601
Tel. 540-722-2181
Fax 540-722-2381
makers@mccarthyakers.com
Counsel for Plaintiff

A COPY TESTE:



**VIRGINIA:
IN THE CIRCUIT COURT FOR THE CITY OF WINCHESTER**

**BESSIE M. GLOVER TRUST
BESSIE M. GLOVER
ROBERT GLOVER
(A/K/A RICH BLUFF, LLC)**

PLAINTIFFS,

V.

**CASE # CL 14-384
CASE # CL 14-268**

DIANE'S DINER, LLC

And,

DIANE ASHBY, PERSONNALLY

DEFENDANTS.

**MOTION TO DISMISS THE CASES FILED BY DIANE ASHBY &
DIANE'S DINER, LLC, (CL14-384 AND CL14-268)**

COMES NOW the Plaintiffs, (the Glovers here and after) by counsel make a general denial of all representations made by the defendants (Diane Ashby & Diane's Diner, LLC) to this honorable court in her verified counter claim and in support of the Plaintiffs' (The Glovers) Motion to Dismiss they do say as follows:

- 1) The legal structure of the relationship between (Landlord) and (Tenant) is embodied by the certain commercial lease dated November 1, 2006 and as amended on September 9, 2009, signed and agreed to by both parties. Here attached as a true copy of the commercial lease [as Attachment A] and the amended commercial lease, [as Attachment B]. The Motion to Dismiss includes but is not limited to the Defendants' (Diane Ashby, & Diane's Diner, LLC)**

claim of common law and statutory conspiracy against the Glovers demanding injunctive relief.

- 2) All facts and circumstances before this honorable court arose out of the commercial lease. The said commercial lease was prepared by venerated Tom Dickenson of the local bar and submitted to the Plaintiffs (The Glovers) as the commercial lease of 334 Amherst Street, Winchester, VA 22601, premises “Amherst Diner.” The said commercial lease noted above governs the above said cases before the court as a written instrument barring all parole evidence.**
- 3) Nowhere in the four corners of this provision stated above do the Plaintiffs (The Glovers) give the Defendants (Diane Ashby & Diane’s Diner, LLC) ownership of the name “Amherst Diner.”**
- 4) The lease was signed and agreed to by the Defendant’s (Diane Ashby & Diane’s Diner, LLC) and the Plaintiffs (The Glovers) on November 1, 2006 and as amended on September 9, 2009. The lease states as follows:**
 - a) Paragraph I, Section f., PREMISES: “Amherst Diner, consisting of a brick building, together with the personal property located thereon including the equipment shown on the attached Schedule A, said property being located at 334 Amherst Street, Winchester, Virginia, fronting thereon a distance of 46 feet, more or less, and extending back between parallel lines a distance of 108 feet, including the marked parking spaces along the north boundary and which consists of the building where the Amherst Diner currently operates and the parking spaces relating thereto. This is the eastern portion of a larger tract of land conveyed to the Lessor by Robert E. Glover.”**
- 5) The Plaintiffs attach a letter [as Attachment C] from Mrs. Bessie Glover of “Rich Bluff LLC,” to Mr. McCarthy of “McCarthy & Akers” with reference to Mr. & Mrs. Glover contesting the granting of the trademark “Amherst Diner” to Diane Ashby dated July 23, 2014. Reference the attached pleading to the USPTO filed by Mr. Glover to the USPTO., which is adopted and incorporated here as**

part of the pleadings of the Plaintiffs' (The Glovers) complaint as Exhibit D.

- 6) The Defendants (Diane Ashby & Diane's Diner, LLC) committed not only a fraud on the court but also a fraud on the United States Patent and Trademark Office by claiming to be the owner of the Trademark "Amherst Diner" on the Application filed on January 26, 2010 by Diane Ashby at which time the defendant violated the terms of the lease dated November 1, 2006 and amended on September 9, 2009. Reference the attached application to the United States Patent and Trademark office [as Attachment D] and the following paragraph of the commercial lease:**

a) Paragraph 14, Name. "Tenant shall not change the name of the diner and restaurant without prior written approval of the Landlord. Also, other than what currently exists, Tenant will not allow to be placed or maintain any sign, awning or canopy in, upon the Premises, nor shall Tenant place on the display windows any sign, lettering, coloring or advertising matter of any nature without the prior written approval of the Landlord."

- 7) The Defendants (Diane Ashby & Diane's Diner, LLC) claim in the letter she wrote to the United States Patent and Trademark Office [as Attachment E] states, that she wanted to protect the name "Amherst Diner" located at 334 Amherst Street in Winchester, VA for which she had worked so hard to grow, is strictly false. Attached please find the following [as Attachment F]:**

a) An article from the Winchester Star, Posted August 2, 2014, written by Sally Voth. In the article Ms. Voth states the following, "Bessie Glover is the registered agent of Rich Bluff LLC, which owns the building at 334 Amherst St. It has been known as the Amherst Diner for decades". The defendant began renting and operating the above referenced premises in 2006. To date, it has not even been a decade. The intentional fraud and deceit concocted by Ms. Diane Ashby claiming falsely that she was the founder of the "Amherst Diner" speaks for itself.

8) The Defendants (Diane Ashby & Diane's Diner, LLC) state in the attached letter [Attachment E] found in paragraph 7 that the former Mayor of Winchester, VA and current business owner, Mr. Larry Omps of Omps Funeral Home and Cremation Center endorsed the defendant as the "Amherst Diner." Attached is a letter of retraction from Mr. Larry Omps to The United States Patent and Trademark Office, dated October 16, 2014 [as Attachment G] which states that Mr. Larry Omps only meant to congratulate Ms. Diane Ashby on opening a new business in the city of Winchester, not to recognize her as the "Amherst Diner." Mr. Omps will happily testify to authenticate his letter to the United States Patent and Trademark Office.

9) The Defendants (Diane Ashby & Diane's Diner, LLC) claim that the Plaintiffs' (The Glovers) interference with the success of the business caused the Defendants to lose a significant amount of money while operating the Amherst Diner. These claims are strictly false. The Plaintiffs deny any interference to the Defendants claim. The Defendant knew before the term of the lease began that the Glovers had owned the property for decades and were frequent customers of the Amherst Diner. The Plaintiffs are bound by the lease to a "right of entry." The following paragraph from the terms of the lease signed and agreed to by both parties in 2006 and as amended in 2009 speaks for itself:

a) Paragraph 25, Access To Premises. "Landlord and its representatives shall have the right to enter upon the Premises during all regular business hours (and in emergencies at all times) for the purpose of inspecting or exhibiting the same to purchasers, mortgagees and tenants, prospective or present, or for the purpose of making such repairs, additions, alterations or improvements thereto or thereon or to the building of which it forms a part as Landlord may deem desirable or necessary, and for any other lawful purpose. During the last six (6) months of the Lease Term, Landlord shall

have the right to maintain a “for rent” sign on the Premises.”

- 10) Plaintiffs are entitled to attorney’s fees by the defendant, reference the following paragraph of the lease signed in 2006 and as amended in 2009 to support this claim:**
 - a) Paragraph 23. Default/Remedies/Bankruptcy. b (ix) “In the event that Landlord must reply to letters or other communication from Tenant or Tenant’s attorney, or if Landlord brings suit for the possession of the Premises, for the recovery of any sum due hereunder, or for any other relief against Landlord, declaratory or otherwise, or if Tenant brings any suit for any relief against Landlord, declaratory or otherwise, arising out of this Lease, then in each instance Tenant agrees to pay Landlord all costs, expenses and reasonable attorneys’ fees that Landlord may have incurred in connection therewith.”**

- 11) The Defendants (Diane Ashby & Diane’s Diner, LLC) is practicing fraud on this court by gross misrepresentation and causing obstruction of the administration of justice by falsely representing that she had an oral agreement with the Plaintiffs (The Glovers.)**

- 12) No oral agreement was ever made between the Plaintiffs (The Glovers) and the Defendants (Diane Ashby & Diane’s Diner, LLC) The only agreement of record is the lease signed and agreed to by both parties on November 1, 2006 and as amended on September 9, 2009. The Defendants (Diane Ashby & Diane’s Diner, LLC) has continued to this very moment to falsely inform this honorable court that she had an oral agreement, a falsehood and an exaggerated story.**


WHEREFORE, Plaintiffs (The Glovers) pray to this honorable court that all claims and cases brought against them by the Defendants (Diane Ashby & Diane's Diner, LLC) be hereby dismissed with prejudice and that they be awarded court cost and attorney's fees for the reasons above stated in paragraphs 1-12.

BY: *JD*
J. BENJAMIN DICK
Counsel for the Plaintiffs
Law Offices of J. Benjamin Dick
421 Park Street, Suite 2
Charlottesville, Va 22902
(434) 977-6607
(434) 825-5246

CERTIFICATE OF SERVICE

I do hereby certify that on this 19th day of March, 2015, I sent a true copy of the foregoing by first-class, postage prepaid mail upon:

Matthew S. Akers, Esquire
McCarthy & Akers, PLC
302 W. Boscawen Street
Winchester, Virginia 22601
Counsel for the Defendants and Cross Claimants



J. Benjamin Dick

VIRGINIA: IN THE CIRCUIT COURT OF THE CITY OF WINCHESTER

BESSIE M. GLOVER, TRUST, et al.,
Plaintiffs

v.

Civil Action Nos. 14 – 268, 384

DIANE'S DINER, LLC, et al.,
Defendants

RECUSAL ORDER

This case came before the Court on a request for a hearing date and the Court's review of the file.

Upon consideration of the issues raised in the pleadings and the identity of the parties, the Court has decided to recuse itself from hearing this case. The individual principal parties are personally known to the Court, and the Court has dined at the diner in dispute for decades.

Therefore, it is ADJUDGED AND ORDERED that John E. Wetsel, Jr., is RECUSED from hearing this case. This case is referred to the Chief Judge for designation of a judge for further proceedings in this case.

The Chief Judge will notify the parties as to the judge who has been designated to hear this case. The Clerk is further directed to send a copy of this order to counsel of record and to any unrepresented party, who shall file such objections hereto as deemed advisable within ten days of their receipt of a copy of this order. Endorsement is dispensed with pursuant to Supreme Court Rule 1:13.

Entered March 25, 2015.



VIRGINIA: IN THE CIRCUIT COURT OF THE CITY OF WINCHESTER

BESSIE M. GLOVER, TRUST, ET AL

v.

CIVIL ACTION NOS. 14-268, 384

DIANE'S DINER, LLC, ET AL

ORDER

IT APPEARING by an Order entered on March 25, 2015, the Honorable John E. Wetsel, Jr., Judge, who sits as the resident Judge in the Circuit Court of the City of Winchester and so generally hears cases pending in it, was recused in this matter and further that this matter was referred to the Honorable Thomas J. Wilson, IV, Chief Judge, for the designation of a Judge for further proceedings;

It is hereby ORDERED that this matter is assigned to the Honorable Ron L. Napier, for further proceedings, including final disposition.

Counsel are directed to confer with Terry Whittle, Clerk, Circuit Court of the City of Winchester, Virginia, at 540-677-5770, respecting all further proceedings in this cause.

The Clerk shall further certify a copy hereof to counsel of record and to all Judges of the Twenty-Sixth Judicial Circuit.

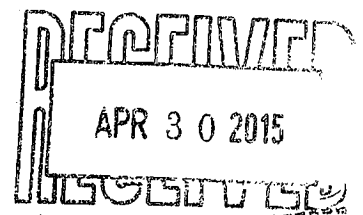
ENTERED: April 23rd, 2015.

ENTER:



Thomas J. Wilson, IV
Chief Judge

*mailed
4/23/15*



VIRGINIA:

IN THE CIRCUIT COURT OF WINCHESTER CITY

BESSIE M. GLOVER TRUST, *et al.*, :

Plaintiffs, :

v. :

Case Nos. CL14-384-00, CL14-384-01,
and CL14-268-00

DIANE'S DINER, LLC, *et al.*, :

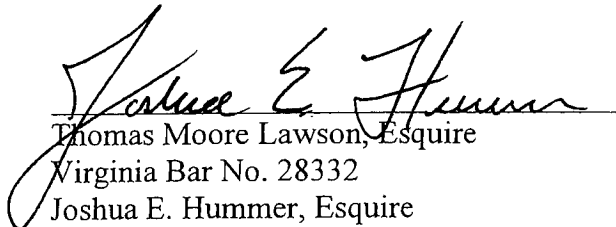
Defendants. :

PRAECIPE

TO THE CLERK OF THIS HONORABLE COURT:

PLEASE ENTER THE APPEARANCE of Thomas Moore Lawson, Esquire, Joshua E. Hummer, Esquire, and the law firm of Lawson and Silek, P.L.C. as counsel for Plaintiffs Bessie M. Glover Trust, et al. in the above matters.

Respectfully submitted,
BESSIE M. GLOVER TRUST, et al.
By Counsel



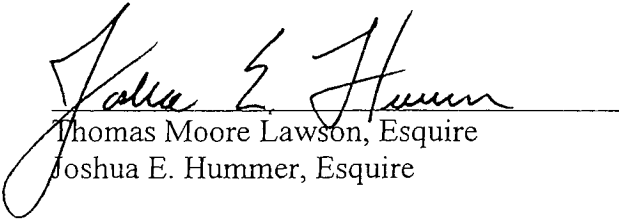
Thomas Moore Lawson, Esquire
Virginia Bar No. 28332
Joshua E. Hummer, Esquire
Virginia Bar No. 71094
Lawson and Silek, P.L.C.
P. O. Box 2740
Winchester, VA 22604
Phone: (540) 665-0050
Fax: (540) 722-4051
Email: tlawson@lspkc.com
jhummer@lspkc.com

Counsel for Plaintiffs Bessie M. Glover Trust, *et. al*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 28th day of April, 2015, the foregoing Praecipe was mailed first-class, postage prepaid to:

Matthew S. Akers, Esquire
McCarthy & Akers, PLC
302 W. Boscawen Street
Winchester, VA 22601


Thomas Moore Lawson, Esquire
Joshua E. Hummer, Esquire

VIRGINIA: IN THE CIRCUIT COURT FOR THE CITY OF WINCHESTER

DIANE'S DINER, LLC,
Plaintiff,

v.


Civil Action No. CL14-268

BESSIE M. GLOVER, ET AL.,
Defendants.

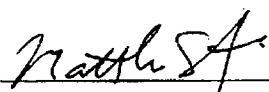
ORDER TO SUBSTITUTE COUNSEL FOR DEFENDANTS

This day came the parties and requested leave to substitute counsel for the Defendants in this action. UPON CONSIDERATION WHEREOF, it appearing to the Court that there is good cause for such substitution, Cary M. Craig, Jr., of Harrison & Johnston, PLC, is granted leave to withdrawal as counsel for the Defendants in this action, and J. Benjamin Dick shall be substituted as counsel for the Defendants in this action.

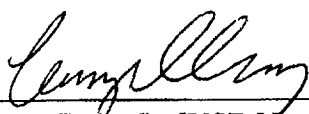
ENTERED this 29th day of April, 2015.



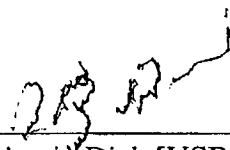
Judge, Circuit Court for Winchester City



Matthew S. Akers [VSB No. 74615]
McCARTHY & AKERS, P.L.C
302 West Boscawen Street
Winchester, Virginia 22601
Tel. 540-722-2181
Fax 540-722-2381
makers@mccarthyakers.com
Counsel for Plaintiff



Cary M. Craig, Jr. [VSB No. 74056]
HARRISON & JOHNSTON, PLC
21 South Loudoun Street
Winchester, Virginia 22601
Tel. 540-667-1266
Fax 540-667-1312
craig@harrison-johnston.com



J. Benjamin Dick [VSB No. 18338]
421 Park Street, Suite 2
Charlottesville, Virginia 22902
Tel. 434-977-6607
Cell 434-825-5246
jbenjamindick2000@yahoo.com
Counsel for Defendants

VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF WINCHESTER

DIANE'S DINER, LLC,

Plaintiff,

v.

BESSIE M. GLOVER, *et al.*,

Defendants.

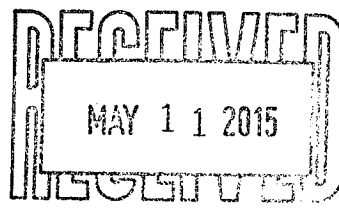
Case No. CL14-268

MOTION FOR SUMMARY JUDGMENT

COMES NOW Plaintiff Diane's Diner, LLC, t/a Amherst Diner, by counsel, and moves this Honorable Court to enter summary judgment on its claims against Defendants Bessie M. Glover, Robert Glover, Rich Bluff, LLC, and Bessie M. Glover Trust ("Defendants"), pursuant to Rule 3:20 of the Rules of the Supreme Court of Virginia. As the bases therefore, Diane's Diner, LLC, t/a Amherst Diner states as follows:

I. STATEMENT OF UNDISPUTED FACTS

On March 31, 2015, Plaintiff's counsel served Plaintiff's First Set of Requests for Admissions ("Requests") on Defendants. A true and accurate copy of these Requests are attached hereto as "Exhibit 1" and incorporated herein by reference. Diane's Diner, t/a Amherst Diner has received no response to its Requests for Admissions although more than twenty-one days have passed. Pursuant to Rule 4:11(a) of the Rules of the Supreme Court of Virginia, Plaintiff's Requests for Admission are deemed admitted. Thus, the following facts, all of



which were laid out in Plaintiff's Requests, are undisputed.

Amherst Diner ("Amherst Diner") is a Virginia limited liability company with its principal office in the City of Winchester, Virginia. (Request 1.) Diane Ashby is the sole member of Amherst Diner. (Request 2.) Amherst Diner owned and operated a restaurant located at 334 Amherst Street in the City of Winchester, Virginia. (Request 3.)

Bessie M. Glover and Robert Glover are Virginia residents, both currently residing in the City of Winchester. (Requests 4-5.) Rich Bluff, LLC ("Rich Bluff") is a Virginia limited liability company with its principal office in the City of Winchester, Virginia. (Request 6.) The Glovers are the members and managers of Rich Bluff. (Request 7.) At all times relevant to this lawsuit, the Glovers have treated Rich Bluff as their alter ego. (Request 8.) Rich Bluff is the record owner of title of the property known as 334-338 Amherst Street, Tax Map ID No. 172-01-14 in the City of Winchester ("Property"), where the Amherst Diner operates. (Request 9.) The Bessie M. Glover Trust is the previous record owner of title of the Property, and the Glovers serve as Trustees of the Bessie M. Glover Trust. (Requests 10-11.)

In November 2006, the Amherst Diner began operating its restaurant at the Property. (Request 12.) The Amherst Diner has grown as a popular local establishment, serving tens of thousands of customers each year. (Request 13.) Diane Ashby and the Amherst Diner had a lease agreement with Defendants to operate the restaurant at the Property starting in November 2006. (Request 14.) Over the years, the parties entered into additional lease agreements through the course of business. (Request 15.) Defendants and Plaintiff agreed that Plaintiff would pay Three Thousand Five Hundred and 00/100 (\$3,500.00) per month, and Plaintiff paid each month's rent on time. (Requests 58-59.)

Defendants agreed not to interfere with the Amherst Diner's business, with its

customers, or with its employees during its tenancy at the property. (Requests 20, 60.) However, as detailed herein, Defendants breached the lease agreement in multiple ways, through their direct actions—and those of their agents—to interfere, harass and intimidate Ashby, the Amherst Diner, and its employees. (Request 61.) Defendants' actions, and those of their agents, have resulted in damages to the Amherst Diner. (Request 62.)

Defendants agreed to make repairs and replacements to equipment on the Property, but Defendants refused to make certain of these repairs and replacements. (Requests 16-17.) Amherst Diner expended a significant amount of money repairing and replacing equipment that the Defendants were required to repair or replace. (Request 18.) Defendants coerced Amherst Diner into performing additional work that was not agreed to by the parties by threatening to evict the Amherst Diner from the Property. (Request 19.)

On multiple occasions, Defendants entered the restaurant and caused disruptions by making loud complaints about the food, about the sanitation, and about the temperature of the restaurant, such that the customers could hear. (Request 21.) Also on multiple occasions, Defendants entered the restaurant and made false and injurious statements about the condition of the Amherst Diner's current and future operations within the hearing of customers and employees. (Request 22.) Additionally, Defendants have entered the restaurant, harassed Amherst Diner employees and interfered with preparation of the food. (Requests 23-24.) Defendants even have physically pushed an Amherst Diner employee. (Request 25.)

Defendants have forced the Amherst Diner to remove decorations from the restaurant and have tried to instruct Amherst Diner employees to prepare food in a manner contrary to the instructions of the Amherst Diner. (Requests 26-27.) Defendants have attempted to force the Amherst Diner to prohibit a certain regular customer from dining at the restaurant, due to a

political disagreement Defendants had with this individual. (Requests 28-29.) Defendants have threatened to shut down the business of the Amherst Diner and have told other individuals that they intent to “bury” the Amherst Diner and/or Ashby. (Requests 30-31.)

In January 2014, a sewage main line at the Property collapsed. (Request 32.) Fixing the sewage main line was the responsibility of the Defendants, so Plaintiff requested that Defendants fix the sewage line in such a matter as not to disrupt the business of Amherst Diner. (Requests 33-34.) Defendants refused to act expeditiously to fix the sewage main line, and the Amherst Diner had to close for five days during the repair, resulting in significant business loss for the Amherst Diner. (Requests 35-37.) Furthermore, Defendants agreed to pay for repairs to the fire suppressant system on the Property but Defendants failed to do so. (Requests 38-39.)

On or about April 30, 2014, Bessie M. Glover, as Trustee of the Bessie M. Glover Trust and Manager of Rich Bluff, sent a letter to the Amherst Diner instructing the business to vacate the Property within thirty days, or by May 31, 2014. (Request 40.) Defendants represented to Ashby, however, that they were willing to delay taking any action to evict the Amherst Diner. (Request 41.) Defendants previously had agreed to provide Amherst Diner a reasonable period of time to wind up the business at the Property before relocating, and Plaintiff relied on these agreements. (Requests 42-43.) Plaintiff spent a significant amount of money repairing pipes and re-upholstering booths at the Property, in reliance on the parties’ agreement that Amherst Diner could continue in operation at the Property. (Requests 44-45.) However, Defendants evicted the Amherst Diner on unreasonably short notice, causing Amherst Diner to incur significant expenses and loss of revenue in moving to a new location. (Requests 46-48.)

Defendants, personally or through agents, intimidated and harassed Ashby and employees of the Amherst Diner after Plaintiff moved the restaurant from the Property.

(Request 51.) For example, Defendants, personally or through agents, took pictures of the vehicles and license plates of those parked at the Amherst Diner, in order to intimidate Ashby, customers, and employees of the Amherst Diner. (Requests 49-50.) Furthermore, Defendants, personally or through agents, held private and public conversations and conversations in online forums in which they spread false and malicious information about Ashby and the Amherst Diner. (Request 52.) Also, Defendants hired contractors to perform work on the Property and then had the bills sent to Plaintiff, in order to harass Plaintiff and injure its reputation in the community. (Requests 53-54.)

II. LEGAL STANDARD

A trial court may enter summary judgment when no material fact is genuinely in dispute. Sup. Ct. R. 3:20. “If it appears from the pleadings [and] . . . the admissions, if any, in the proceedings . . . that the moving party is entitled to judgment, the court shall enter judgment in that party's favor.” *Id.*

Virginia’s summary judgment rules and discovery rules “were adopted to allow trial courts to bring litigation to an end at an early stage when it clearly appeared that one of the parties was entitled to a judgment in the case as made out by the pleadings and the admissions of the parties.” *Carson by Meredith v. LeBlanc*, 245 Va. 135, 139-40, 427 S.E.2d 189, 192 (1993) (quoting *Kasco Mills, Inc. v. Ferebee*, 197 Va. 589, 593, 90 S.E.2d 866, 870 (1956)).

III. ARGUMENT

On the basis of the undisputed facts, Amherst Diner is entitled to summary judgment on its claims for injunctive relief and its claim for damages. Through their failure to deny the

statements in Plaintiff's Requests for Admission, Defendants have admitted that they breached their lease agreements with the Plaintiff, have tortiously interfered with the Plaintiff's business, have committed the tort of conspiracy against Defendant and that Plaintiff is entitled to the requested injunctive relief and damages.

A. Permanent Injunction

There is no adequate remedy at law to stop Defendants from interfering with the business of the Amherst Diner. (Request 55.) The balance of equities favors Amherst Diner, an established local business and employer with a loyal customer base, because the risk of loss to the Amherst Diner outweighs any potential loss to the Defendants. (Request 56.) Therefore, a permanent injunction serves the public interest of preserving the rights of Amherst Diner to carry on the business without interference. (Request 57.)

B. Temporary Injunction

In the event this Court does not grant Plaintiff's motion for a permanent injunction via summary judgment, a temporary injunction is appropriate pending further adjudication of the case. Defendants' continued activity presents imminent and irreparable harm to Amherst Diner because the Defendants continue to harass Amherst Diner, its employees, and its customers. (Request 70.) Amherst Diner is likely to succeed on the merits of its case, as Defendants have admitted to all the factual issues in the case by their failure to respond to Plaintiff's Requests for Admissions. Furthermore, the public interest is served by granting a temporary injunction preventing Defendants from further harassing Amherst Diner employees and patrons. (Request 57.)

C. Breach of Contract

The Amherst Diner and Defendant had an oral lease agreement whereby, inter alia, the

Amherst Diner paid Three Thousand Five Hundred and 00/100 Dollars (\$3,500.00) per month. (Request 58.) In accordance with the oral lease, the Amherst Diner has paid each months' rent on time. (Request 59.) Pursuant to the terms of the lease agreement, Defendants are not allowed to interfere with the business of the Amherst Diner, and they were required to provide a reasonable time for the Amherst Diner to move to a new location in the event of lease termination. (Requests 60, 64.)

Defendants have breached the terms of the lease agreement as set forth above in the statement of undisputed fact: by interfering with the business of the Amherst Diner, by refusing to perform the repairs and replacements required on the Property, and by attempting to terminate the lease agreement with only a month's notice. (Requests 61, 63, 65.) As a result of Defendants' breach, the Amherst Diner has suffered considerable damages in the amount of at least One Hundred Thousand and 00/100 Dollars (\$100,000.00) and is at risk to lose even more if the Defendants are permitted to continue. (Requests 62, 75.)

D. Tortious Interference With Business

The Amherst Diner has an ongoing business relationship with hundreds of regular customers who regularly patronize the Amherst Diner and provide significant economic benefit to the restaurant. (Request 67.) At all pertinent times, the Defendants have had knowledge of the Amherst Diner's many patrons and its loyal customer base, and of the mutual expectations that the Amherst Diner would continue to operate at the Property with resultant economic benefit. (Request 68.) There is a reasonable certainty that Amherst Diner would continue in this profitable relationship with its customers absent Defendants' attempts to interfere. (Request 69.) Defendants have used and continue to use improper methods to interfere with the business of the Amherst Diner. (Request 70.) As a proximate and direct result of Defendants'

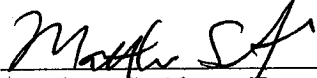
interference, the Amherst Diner has suffered damages of at least One Hundred Thousand and 00/100 Dollars (\$100,000.00) in the form of lost business and is at risk of losing all its business if the Defendants are allowed to continue interfering. (Requests 71-72, 75.)

E. Common Law Conspiracy and Statutory Conspiracy

Defendants have worked in combination for the purpose of willfully and maliciously injuring the Amherst Diner's business. (Request 73.) The Defendants' conspiracy has caused damages of at least One Hundred Thousand and 00/100 Dollars (\$100,000.00) to the Amherst Diner's business and threatens to cause irreparable harm if allowed to continue. (Requests 74-75.)

WHEREFORE, Plaintiff Diane's Diner, LLC, t/a Amherst Diner respectfully moves this Honorable Court to grant its Motion for Summary Judgment, permanently enjoin Defendants Bessie M. Glover, Robert Glover, Rich Bluff, LLC, and Bessie M. Glover Trust from any interference with the Plaintiff's business and award Plaintiff compensatory damages in the amount of One Hundred Thousand and 00/100 Dollars (\$100,000.00), punitive damages in the same amount, treble damages against the Defendants, jointly and severally, and grant Diane's Diner, LLC, t/a Amherst Diner such further relief as this Honorable Court may deem appropriate.

Respectfully Submitted,
DIANE'S DINER, LLC, t/a AMHERST DINER,
By Counsel.



Matthew S. Akers, Esquire
Virginia Bar No. 74615
McCARTHY & AKERS, P.L.C.
302 West Boscawen Street
Winchester, VA 22601
540-722-2181 Office
540-722-2381 Fax

Counsel for the Plaintiff

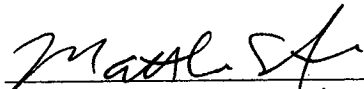
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 7th day of May, 2015, a true copy of the foregoing

Motion for Summary Judgment was delivered by U.S. Mail, postage pre-paid to:

J. Benjamin Dick, Esquire
Law Offices of J. Benjamin Dick
421 Park St., Suite 2
Charlottesville, VA 22902
Counsel for Defendants

Joshua E. Hummer, Esquire
Lawson and Silek, PLC
120 Exeter Drive, Suite 200
Winchester, VA 22603



Matthew S. Akers, Esquire

VIRGINIA:

IN THE CIRCUIT COURT OF CITY OF THE WINCHESTER

DIANE'S DINER, LLC,

Plaintiff,

v.

BESSIE M. GLOVER, *et al.*,

Defendants.

Case No. CL14-268

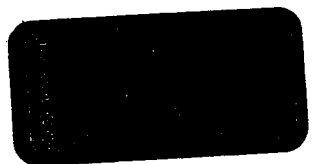
FIRST SET OF REQUESTS FOR ADMISSIONS

COMES NOW Plaintiff Diane's Diner, LLC, t/a Amherst Diner, and pursuant to Rule 4:11, Rules of the Supreme Court of Virginia, and this Court's instructions, requests that Defendants Bessie M. Glover Trust, Bessie M. Glover, and Robert Glover, subject to the following instructions and definitions, Admit the following matters:

INSTRUCTIONS

A. The propriety of your responses is governed by the Rules of the Supreme Court of Virginia. Rule 4:11 (a) and Rule 4:12 (c), Rules of the Supreme Court of Virginia, provide in pertinent part as follows:

"The answer shall specifically deny the matter or set forth in detail the reasons why the answering party cannot admit the matter. A denial shall fairly meet the substance of the requested admission, and when good faith requires that a party qualify his answer, or deny only a part of the matter of which an admission is requested, he shall specify so much of it as is true and qualify or deny the remainder. An answering party may not give lack of information or knowledge as a reason for failure to Admit unless he states that he has made reasonable inquiry and that the information known or readily obtainable by him is insufficient to enable him to Admit. A party who considers that a matter of which an admission has been requested presents a genuine issue for trial may not, on that



ground alone, object to the request[.]” Rule 4:11 (a), Rules of the Supreme Court of Virginia.

“If a party fails to admit the genuineness of any document or the truth of any matter as requested under Rule 4:11, and if the party requesting the admissions thereafter proves the genuineness of any document or the truth of the matter, he may apply to the court for an order requiring the other party to pay him the reasonable expenses incurred in making that proof, including reasonable attorney’s fees.” Rule 4:12 (c), Rules of the Supreme Court of Virginia.

B. These Requests for Admissions (“Requests”) are continuing in nature so as to require Defendants to file supplemental answers to the extent required under Rule 4:1(e), Rules of the Supreme Court of Virginia, if any Defendant obtains further or different information before trial.

C. Any word written in the singular herein shall be construed as plural or vice versa when necessary to facilitate the response to any Request.

D. Each reference to a firm or company shall be deemed to refer to that firm or company, and its parents, subsidiaries, or associated, affiliated, related or controlled companies.

E. Each Request shall be accorded a separate response.

DEFINITIONS

For purposes of these Requests, the following definitions shall apply:

A. The term “Defendant” or “Defendants” shall mean Bessie M. Glover Trust, Bessie M. Glover, Robert Glover, Rich Bluff LLC, their employees, agents, attorneys, and each person acting or purporting to act on their behalf or under their control.

B. The term “the Glovers” shall mean Bessie M. Glover and Robert Glover.

C. The term "Diane's Diner" or "Plaintiff" shall mean Diane's Diner LLC, Diane Ashby, their employees, agents, attorneys, and each person acting or purporting to act on their behalf or under their control.

D. The term "Amherst Diner" shall mean Amherst Diner, LLC, a Virginia limited liability company with its principal office in the City of Winchester, Virginia, the sole member of which is Diane Ashby.

E. The term "you" shall mean Bessie M. Glover Trust, Bessie M. Glover, Robert Glover, and Rich Bluff LLC or any Plaintiff individually. The term "you" shall be construed in the singular or the plural as necessary to bring within the scope of the Requests all responses which otherwise might be construed to be outside their scope.

F. The term "the Property" shall mean the property known as 334-338 Amherst Street, Tax Map ID No. 172-01-14 in the City of Winchester, Virginia.

G. The terms "concern" and "concerning" shall mean directly or indirectly relating to, mentioning, describing, comprising, constituting, consisting of, referring to, reflecting upon, summarizing, memorializing, or being in any way logically or factually connected with the subject matter of the documents sought in the Requests in which the terms are used.

H. The terms "relating to" and "referring to" shall be interpreted to mean anything that constitutes, deals with, refers to, or is in any way pertinent or relevant to that given subject, including, but not limited to, documents concerning the preparation of other documents.

I. The terms "communications," "communicate," and "communicated" shall mean an oral, graphic, demonstrative, telephonic, verbal, electronic, written or like conveyance of information, including documents.

J. The terms "or" as well as "and" shall be construed disjunctively or conjunctively as necessary in order to bring within the scope of the Requests all responses which otherwise might be construed to be outside its scope.

REQUESTS

1. Admit that Amherst Diner is a Virginia limited liability company with its principal office in the City of Winchester, Virginia.

ANSWER:

2. Admit that Diane Ashby is the sole member of the Amherst Diner.

ANSWER:

3. Admit that Amherst Diner owned and operated a restaurant located at 334 Amherst Street in the City of Winchester, Virginia.

ANSWER:

4. Admit that Bessie M. Glover is a Virginia resident, currently residing in the City of Winchester, Virginia.

ANSWER:

5. Admit that Robert Glover is a Virginia resident, currently residing in the City of Winchester, Virginia.

ANSWER:

6. Admit that Rich Bluff, LLC ("Rich Bluff") is a Virginia limited liability company with its principal office in the City of Winchester, Virginia.

ANSWER:

7. Admit that the Glovers are the members/ managers of Rich Bluff.

ANSWER:

8. Admit that, during all times relevant to this lawsuit, the Glovers have treated Rich Bluff as their *alter ego*.

ANSWER:

9. Admit that Rich Bluff is the record owner of title of the property known as 334-338 Amherst Street, Tax Map ID No. 172-01-14 in the City of Winchester, where the Amherst Diner operates.

ANSWER:

10. Admit that the Bessie M. Glover Trust is the previous record owner of title of the Property.

ANSWER:

11. Admit that the Glovers serve as Trustees of the Glover Trust.

ANSWER:

12. Admit that, in November 2006, the Amherst Diner began operating its restaurant at the Property.

ANSWER:

13. Admit that the Amherst Diner has grown as a popular local establishment, serving tens of thousands of customers each year.

ANSWER:

14. Admit that Diane Ashby and the Amherst Diner had a lease agreement with Defendants to operate the restaurant at the Property starting in November 2006.

ANSWER:

15. Admit that, over the years, the parties entered into additional lease agreements through the course of business.

ANSWER:

16. Admit that Defendants agreed to make repairs and replacements to equipment on the Property.

ANSWER:

17. Admit that Defendants refused to make certain of these repairs and replacements.

ANSWER:

18. Admit that the Amherst Diner expended a significant amount of money repairing and replacing equipment that the Defendants were required to repair or replace.

ANSWER:

19. Admit that Defendants coerced the Amherst Diner into performing additional work that was not agreed to by the parties by threatening to evict the Amherst Diner from the Property.

ANSWER:

20. Admit that the Defendants agreed not to interfere with the Amherst Diner's business with its customers or employees during its tenancy at the Property.

ANSWER:

21. Admit that, on multiple occasions, Defendants entered the restaurant and caused disruptions by making loud complaints about the food, about the sanitation, and about the temperature of the restaurant, such that the customers could hear.

ANSWER:

22. Admit that, on multiple occasions, Defendants entered the restaurant and made false and injurious statements about the condition of the Amherst Diner's current and future operations within the hearing of customers and employees.

ANSWER:

23. Admit that Defendants have entered the restaurant and harassed employees of Amherst Diner.

ANSWER:

24. Admit that Defendants have interfered with the preparation of the food at the Amherst Diner.

ANSWER:

25. Admit that Defendant physically pushed an employee of the Amherst Diner.

ANSWER:

26. Admit that Defendants have forced the Amherst Diner to remove decorations from the restaurant.

ANSWER:

27. Admit that Defendants have attempted to instruct the Amherst Diner employees how to prepare food in a manner contrary to the instructions of the Amherst Diner.

ANSWER:

28. Admit that Defendants have attempted to force the Amherst Diner to prohibit a certain regular customer from dining at the restaurant.

ANSWER:

29. Admit that Defendants attempted to try and prohibit the regular customer from dining at Amherst Diner due to a political disagreement the Glovers had with this individual.

ANSWER:

30. Admit that Defendants have threatened to shut down the business of the Amherst Diner.

ANSWER:

31. Admit that the Defendants have told other individuals that they intend to "bury" the Amherst Diner and/or Ashby.

ANSWER:

32. Admit that, in January 2014, a sewage main line at the Property collapsed.

ANSWER:

33. Admit that fixing the sewage main line was the responsibility of the Defendants.

ANSWER:

34. Admit that Plaintiff requested that Defendants fix the sewage line in such a manner as not to disrupt the business of Amherst Diner.

ANSWER:

35. Admit that Defendants refused to act expeditiously to fix the sewage main line.

ANSWER:

36. Admit that Amherst Diner had to close for five days during repair of the sewage main line.

ANSWER:

37. Admit that being closed for five days, due to Defendants' failure to act quickly to fix the sewage main line, resulted in significant loss of business for the Amherst Diner.

ANSWER:

38. Admit that Defendants agreed to pay for repairs to the fire suppressant system on the Property.

ANSWER:

39. Admit that Defendants failed to pay for repairs for the fire suppressant system.

ANSWER:

40. Admit that, on or about April 30, 2014, Bessie M. Glover, as Trustee of the Glover Trust and Manager of Rich Bluff, sent a letter to the Amherst Diner instructing the business to vacate the Property within thirty (30) days, or by May 31, 2014.

ANSWER:

41. Admit that Defendants represented to Ashby that they were willing to delay taking any action to evict the Amherst Diner.

ANSWER:

42. Admit that Plaintiff and Defendants had previous agreements to provide a reasonable period of time to wind up the business at the Property before relocating.

ANSWER:

43. Admit that Plaintiff relied on these agreements that Defendants would provide a reasonable period of time for the Amherst Diner to wind up business before relocating.

ANSWER:

44. Admit that Plaintiff spent a significant amount of money repairing pipes and re-upholstering booths at the Property.

ANSWER:

45. Admit that Plaintiff repaired the pipes and re-upholstered the booths in reliance on the parties' agreement that Amherst Diner could continue in operation at the Property.

ANSWER:

46. Admit that Defendants evicted the Amherst Diner on very short notice.

ANSWER:

47. Admit that Defendants' eviction of the Amherst Diner was unreasonable.

ANSWER:

48. Admit that Defendants' eviction of the Amherst Diner caused the Amherst Diner to incur significant expenses and loss of revenue in moving to a new location.

ANSWER:

49. Admit that Defendants, personally and/ or through agents, took pictures of the vehicles and license plates of those parked at the Amherst Diner.

ANSWER:

50. Admit that Defendants took these pictures, or had an agent take these pictures, in order to intimidate Ashby, customers, and/or employees of the Amherst Diner.

ANSWER:

51. Admit that Defendants, personally and/or through agents, intimidated and harassed Ashby and employees of the Amherst Diner after Plaintiff moved the restaurant from the Property.

ANSWER:

52. Admit that Defendants, personally and/or through agents, held private and public conversations and conversations in online forums, in which they spread false and malicious information about Ashby and the Amherst Diner.

ANSWER:

53. Admit that Defendants hired contractors to perform work on the Property and then had the bills sent to Plaintiff.

ANSWER:

54. Admit that Defendants had contractor bills sent to Plaintiff in order to harass Plaintiff and injure its reputation in the community.

ANSWER:

55. Admit that Plaintiff has no adequate remedy at law in order to stop Defendants from interfering with the Amherst Diner's business.

ANSWER:

56. Admit that the balance of equities favors the Amherst Diner because the risk of loss to the Amherst Diner outweighs any potential loss to the Defendants.

ANSWER:

57. Admit that a permanent injunction serves the public interest of preserving the rights of Amherst Diner to carry on the business without interference.

ANSWER:

58. Admit that Defendants and Plaintiff had a lease agreement whereby Plaintiff paid Three Thousand Five Hundred and 00/100 Dollars (\$3,500.00) per month.

ANSWER:

59. Admit that Plaintiff paid each month's rent on time.

ANSWER:

60. Admit that, pursuant to the terms of the lease agreement, Defendants agreed not to interfere with the business of the Amherst Diner.

ANSWER:

61. Admit that Defendants breached the lease agreement through their direct actions-- and those of their agents--to interfere, harass and intimidate Ashby, the Amherst Diner, and its employees.

ANSWER:

62. Admit that Defendants' actions, and those of their agents, to interfere, harass, and intimidate resulted in damages to the Amherst Diner.

ANSWER:

63. Admit that Defendants breached the lease agreement by refusing to perform the repairs and replacements required on the Property.

ANSWER:

64. Admit that Defendants promised to allow the Amherst Diner to continue to operate the restaurant at the Property in the future and to provide a reasonable time for the Amherst Diner to move to a new location in the event of termination.

ANSWER:

65. Admit that Defendants breached their promise by unreasonably evicting the Amherst Diner with short notice.

ANSWER:

66. Admit that, as a result of Defendants' breaches, Plaintiff has suffered considerable damages and is entitled to relief.

ANSWER:

67. Admit that the Amherst Diner has an ongoing business relationship with the hundreds of regular customers who regularly patronize the Amherst Diner and provide a significant economic benefit to the restaurant.

ANSWER:

68. Admit that, at all pertinent times, Defendants have had knowledge of the many patrons and loyal customer base of the Amherst Diner as well as the mutual expectations that the Amherst Diner would continue to operate at the Property for economic benefit.

ANSWER:

69. Admit that there is a reasonable certainty that the Amherst Diner would continue in this profitable relationship with its customers absent Defendants' attempts to interfere.

ANSWER:

70. Admit that Defendants have used and continue to use improper methods to interfere with the business of Amherst Diner.

ANSWER:

71. Admit that, as a proximate and direct result of Defendants' interference, the Amherst Diner has suffered damages in the form of lost business.

ANSWER:

72. Admit that, as a proximate and direct result of Defendants' interference, the Amherst Diner is at risk of losing additional business if the Defendants are allowed to continue interfering with the business of the Amherst Diner.

ANSWER:

73. Admit that the Defendants have worked in combination for the purpose of willfully and maliciously injuring Plaintiff's business.

ANSWER:

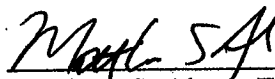
74. Admit that the Defendants' conspiracy has caused significant damages to the Plaintiff's business and threatens to cause irreparable harm if allowed to continue.

ANSWER:

75. Admit that Plaintiff has suffered damages in the amount of One Hundred Thousand and 00/100 Dollars (\$100,000.00) due to the actions of Defendants described herein and in Plaintiff's counterclaim.

ANSWER:

Respectfully submitted,
DIANE'S DINER, LLC,
By Counsel.



Matthew S. Akers, Esquire
Virginia Bar No. 74615
McCARTHY & AKERS, PLC
302 W. Boscawen Street
Winchester, Virginia 22601
Phone: (540) 722-2181
Fax: (540) 722-2381

Counsel for Plaintiff Diane's Diner, LLC

CERTIFICATE OF SERVICE

I do hereby certify that on this 31st day of March, 2015, I caused a copy of the foregoing
to be served *via* first-class, postage-prepaid mail upon:

J. Benjamin Dick, Esquire
Law Offices of J. Benjamin Dick
421 Park St., Suite 2
Charlottesville, VA 22902



Matthew S. Akers

VIRGINIA:

IN THE CIRCUIT COURT OF CITY OF THE WINCHESTER

DIANE'S DINER, LLC,

Plaintiff,

v.

Case No. CL14-268

BESSIE M. GLOVER, *et al.*,

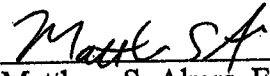
Defendants.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 31st day of March, 2015, a true copy of the foregoing Plaintiff Diane's Diner, LLC's First Set of Requests for Admissions was delivered *via* first-class mail, postage prepaid to the offices of:

J. Benjamin Dick, Esquire
Law Offices of J. Benjamin Dick
421 Park St., Suite 2
Charlottesville, VA 22902

Counsel for the Defendants


Matthew S. Akers, Esquire
Virginia Bar No. 74615
McCARTHY & AKERS, PLC
302 W. Boscawen Street
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Phone: (540) 722-2181
Fax: (540) 722-2381

Counsel for Plaintiff Diane's Diner, LLC

FILED
WINCHESTER CIRCUIT COURT
TERRY H. WHITTLE, CLERK
2015 APR -3 AM 1:17

VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF WINCHESTER

DIANE'S DINER, LLC,

Plaintiff,

v.

Case No. CL14-268

BESSIE M. GLOVER, *et al.*,

Defendants.

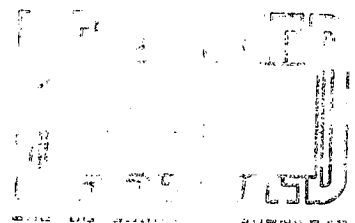
PRAECIPE

The clerk is requested to set a date for a hearing in the above-styled cause, for the following purpose(s) checked below:

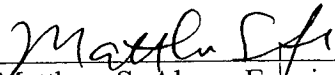
- Entry of Order, judgment or decree.
- Argument on pleadings (specify): _____
- Hearing on motion (specify): Motion for Summary Judgment
- Pretrial conference.
- Set for trial on preliminary issues of fact.
- Other (specify): _____
- Set for trial on the merits, for which purpose I certify that the above styled cause is matured for trial on its merits to be set for trial with () or without () a jury.

Counsel's estimate of time required for the hearing: 10 minutes.

Dated this 8th day of May, 2015.



Respectfully Submitted,
DIANE'S DINER, LLC, t/a AMHERST DINER,
By Counsel.


Matthew S. Akers, Esquire
Virginia Bar No. 74615
MCCARTHY & AKERS, P.L.C.
302 West Boscawen Street
Winchester, VA 22601
540-722-2181 Office
540-722-2381 Fax

Counsel for the Plaintiff

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 8th day of May, 2015, I mailed or delivered a true copy of the foregoing Praecipe to all counsel of record and parties unrepresented by counsel and not in default, the names and addresses of counsel or parties being:

J. Benjamin Dick, Esquire
Law Offices of J. Benjamin Dick
421 Park St., Suite 2
Charlottesville, VA 22902
Counsel for Defendants

Joshua E. Hummer, Esquire
Lawson and Silek, PLC
120 Exeter Drive, Suite 200
Winchester, VA 22603


Matthew S. Akers, Esquire

Counsel for the Plaintiff

VIRGINIA:
IN THE CIRCUIT COURT FOR THE CITY OF WINCHESTER

BESSIE M. GLOVER TRUST
BESSIE M. GLOVER
(A/K/A RICH BLUFF, LLC)

PLAINTIFFS

V.

CASE # CL14-384

DIANE'S DINER, LLC

And,

DIANE ASHBY, PERSONNALY

DEFENDANTS

COMPLAINT

COMES NOW the plaintiffs by counsel who for her complaint state as follows against defendants for judgment jointly and severally, to be entered by this Honorable Court, to wit:

STATEMENT OF FACTS

1. The parties entered into a lease in 2006 to have the defendants run a restaurant services serving food all day to residents and interstate travelers. The restaurant has been in existence since 1956 with successive and continuous tenants and was given the name "Amherst Diner" by the husband plaintiffs, Robert Glover.
2. The landlord plaintiff rented "the premises", not the name, located at 334 Amherst Street and no assignment of the name ever occurred by plaintiffs who are the landlord.
3. The lease term was for 3 years beginning November 1, 2006. The terms of the lease speak for itself and a true executed copy

VALIDATE CASE PAPERS
CASE # : 14000007385
DATE : 07/31/14 TIME : 04:50
CASE : 840014-000004-01
OFF : 31331E P GLOVER TRUS
AMT. : 00-0000

is attached as Exhibit A and is incorporated as if pleaded here. The lease shows a "Schedule A" of equipment that was attached to the freehold including moveable restaurant chattels. The Schedule A speaks for itself. The restaurant was in a "turn key" condition.

4. The tenant defendants borrowed \$9000.00 from Bessie Glover to initially stock the restaurant with food and beverage.
5. The lease by proper notice was assigned by Bessie Glover Trust, LLC to Rich Bluff, LLC, July 31, 2007. Both LLCs are owned by Bessie Glover.
6. A renewal letter dated August 26, 2009 was sent and written by plaintiffs' attorney to defendants' counsel setting forth agreed to new terms. The amended lease was accepted, signed by defendants on September 9, 2009 amending the 2006 lease and delivered to plaintiffs. See Glover Exhibit B here incorporated by reference as if here pleaded. Said letter speaks for itself and is a true copy.
7. From 2009's renewal of the lease, the landlord began to see troubling signs of lease abridgment by defendants and began to bring concerns to defendant tenants as provided in the lease.
8. By letter dated April 30, 2014 sent to defendants, see Glover Exhibit C, here adopted and incorporated by reference as if here pleaded, a fire suppression system and hood cleaning non-compliance term of the lease was not fulfilled by the tenant.
9. Due to this serious breach of duty required of the tenant jeopardizing the safety of the premises and for other instances of non-compliance of terms of the lease, on April 30, 2014 plaintiffs sent a letter of even date spelling out these issues and told defendants it was an "intolerable" situation requiring plaintiff to take immediate possession. See Glover Exhibit C here adopted and incorporated by reference as if here pleaded.

- 10. On May 21, 2014, defendants angrily reacted to this termination by filing a frivolous law suit against plaintiffs, case #840CL14000268-00 and had it served upon plaintiffs' person May 21, 2014. In defendants' suit, false, spurious, and intentional misrepresentations against plaintiffs that were scandalous, sensational, and and wrong. A Fraud on plaintiffs and the Court thereby occurred.**
- 11. No where in plaintiffs' pleading did defendants recite the true and accurate fact that defendants were granted renewal of the 2006 lease month to month and added new terms that the defendants had agreed upon, signed, executed and delivered to plaintiffs September 9, 2009.**
- 12. Defendants in the press by repeated mis-representations to the The Winchester Starffrom to impugn the excellent reputations of plaintiffs in their community and defendants never once mentioned the granted renewal agreed upon by defendants' signature September 9, 2009. See Glover Exhibit B to which defendants are legally bound as a matter of law.**
- 13. Notice to defendants to vacate the premises was served on defendants to quit and deliver up the premises by June 30, 2014. See Glover Exhibit C here adopted and incorporated by reference as if here pleaded.**
- 14. The plaintiffs then learned with no notice to plaintiffs that Diane Ashby misrepresented that she was the owner of the "Amherst Diner" name and the application for trademark to the US Office of Patent and Trademark was signed by Diane Ashby June 15, 2010. Plaintiffs have duly filed with the United States Patent and Trademark Office a "Petition of Cancellation" per its rules. See Glover Exhibit D that is here incorporated by reference as if here pleaded. The outcome of the plaintiffs petition is currently under federal administrative review for cancellation. See Glover Exhibit D here incorporated by reference, for the Amherst Diner History.**
- 15. On June 30,2014, defendants took and removed the**

equipment and chattels o from the premises owned by the plaintiffs and part of the 2006 lease Schedule A and converted the same to defendants' sole use and possession.

- 16. The defendants never discussed these developments with the landlord.**

COUNTS

FOR THE PLAINTIFFS' COUNTS AND CAUSES OF ACTIONS, THE PLAINTIFFS DO STATE AS FOLLOWS SEEKING JUDGMENT AGAINST DEFENDANTS JOINTLY AND SEVERALLY FOR DAMAGES, BOTH COMPENSATORY AND PUNITIVE, AND REASONABLE ATTORNEYS AS PROVIDED IN THE 2006 LEASE AND AS AMENDED, TO WIT, and here adopt the Statement of Facts as if here repleaded for each Count

Count I - Fraud and Deceit

- 1. The defendants signed in agreement the Plaintiffs' lease in 2006, amended 2009, agreeing to abide by the lease terms and as amended. They rented "the premises" and did not own or had assigned the name "Amherst Diner" to defendants.**
- 2. The defendants posted on Facebook as a material fact the tenant defendants owned the name to the world and in turn, represented to plaintiffs by this public publication.**
- 3. The defendants did so with the specific intent to deceive the plaintiffs, the US department of Patents and Trademarks, and to the public, so by the registration of the name "Amherst Diner", the defendants' alone to the exclusion of plaintiffs and to the world and that all could rely on it as true.**
- 4. The plaintiffs relied upon the resgistration as aforesaid, but filed a Petition to Cancel the Defendants' registration as false and fraudulent.**


5. The plaintiffs have been emotionally damaged by the false registration and greatly embarrassed before the public.

WHEREFORE, THE PLAINTIFFS ASK THIS Court to enter judgment for the plaintiffs against the defendants jointly and severally an award of compensatory and punitive damages and attorney fees and plaintiffs' costs expended.

Count II - Wrongful and Intentional Conversion / Breach of Contract

1. The defendants did unauthorized register with the US Trademark the name of "Amherst Diner" to wrongfully exercise dominion and control over another's personal property to the exclusion of or inconsistent with the owners' rights.
2. The defendants similarly did the same of the restaurant's equipment on June 30, 2014 listed in Schedule A of the 2006 Lease and a detailed list will be presented to the Court and replacement costs.
3. The plaintiffs have accordingly damaged the plaintiffs' property and are culpable for Breach of Contract.
4. Plaintiffs have had to expend replacement costs and attorney fees.

WHEREFORE , [PLAINTIFFS request the Court to enter judgment for compensatory and consequential damages jointly and several ly against the defendants and attorneys fees and costs expended.

BY: 
J.BENJAMIN DICK
ATTORNEY FOR PLAINTIFFS
LAW OFFICES OF J.BENJAMIN DICK
421 Park St. Suite 2

Charlottesville, Va. 22902
434-977-6607
434 825 5246 (Cell)

GLOVER EXHIBIT # A

Copy

THIS LEASE by and between the Bessie M. Glover Trust ("Landlord"), Diane's Diner, L.L.C., a Virginia Limited Liability Company ("Tenant"), and Diane Marie Ashby, Guarantor.

WITNESSETH: That in consideration of the mutual covenants and agreements herein contained, it is agreed by and between Landlord and Tenant as follows:

1. **Basic Lease Provisions and Definitions.** In addition to the other provisions which are elsewhere defined in this Lease, the following, whenever used in this Lease shall have the meanings set forth in this Paragraph, and only such meanings, unless such meanings are expressly contradicted, limited or expanded elsewhere herein:

a. **DATE OF LEASE:** November 1, 2006

b. **NAME AND ADDRESS OF PREMISES:**
AMHERST DINER
334 Amherst Street
Winchester, Virginia 22601

c. **LANDLORD'S MAILING ADDRESS:**
BESSIE M. GLOVER, TRUST,
316 Ridge Avenue
Winchester, Virginia 22601

d. **TENANT'S MAILING ADDRESS:** DIANE MARIE ASHBY
212 Grey Wolf Trail
Winchester, Virginia 22602

e. **GUARANTOR:**
Diane Marie Ashby
~~212 Grey Wolf Trail~~ 109 INCA TRAIL
Winchester, Virginia 22602

f. **PREMISES:** Amherst Diner, consisting of a brick diner building, together with the personal property located thereon including the equipment shown on the attached Schedule A, said property being located at 334 Amherst Street, Winchester, Virginia, fronting thereon a distance of 46 feet, more or less, and extending back between parallel lines a distance of 108 feet, including the marked parking spaces along the north boundary and which consists of the building where the Amherst Diner currently operates and the parking spaces relating thereto. This is the eastern portion of a larger tract of land conveyed to the Lessor by Robert E. Glover.

g. **LEASE TERM:** Three years.

h. RENT: Two Thousand Three Hundred Dollars (\$2,300.00) per month, for the first year. Two Thousand Four Hundred Dollars (\$2,400.00) per month for the second year. Two Thousand Five Hundred Dollars (\$2,500.00) for the third year. Also treated as rent hereunder are all payments (\$500.00 minimum) made pursuant to the terms of that certain Note for \$9,000 dated November 1, 2006 in which the Landlord is the payee and the Guarantor herein is the Maker. Payment shall be made in two checks, one for the stated rental above and one for the payment of the Note.

i. PERMITTED USE: Restaurant space

j. CHECKS PAYABLE TO: Bessie M. Glover Trust.

2. Premises. Landlord hereby demises and lets unto Tenant and Tenant hereby leases and takes from Landlord the Premises, subject to the terms and conditions herein contained and all liens, encumbrances, easements, restrictions, zoning laws and governmental or other regulations affecting the Premises. Landlord warrants that as of the date hereof the Premises are zoned for the Tenants intended use as a restaurant.

3. Parking. The Lessee shall be responsible for the parking of her customers' vehicles upon the demised premises and for their ingress and egress to and from Amherst Street. However, for the purpose of entrance to and from Amherst Street, a right of way over the service station property immediately west of the demised premises is granted by the Lessor to the Lessee during the term of this Lease upon such portion of the service station property as is needed to facilitate such entrance to and from Amherst Street. However, this right of way does not include any parking area and Lessee agrees not to exercise it in such a manner as to interfere with normal operation of the service station. The Tenant covenants and agrees that the service station likewise has equal rights to use the entrances and has a right of way over that part of the demised premises as is needed to facilitate entrance to and from Amherst Street by customers of the service station.

4. Term. Tenant shall have and hold the Premises for a term of three (3) years following the commencement thereof, unless sooner terminated or extended as hereinafter provided.

5. Commencement of Term. The lease shall commence on November 1, 2006 and terminates on October 31, 2009.

6. Rent. Tenant agrees to pay to Landlord, without previous demand therefor and without any setoffs or deductions whatsoever, the Rent, payable in equal monthly installments, in advance, on or before the first day of each and every calendar month throughout the Lease Term. In the event the commencement date is other than the first day of a calendar month, the Rent for the portion of the then

current calendar month shall be prorated on the basis of a thirty (30) day month and shall be paid immediately on the commencement date.

7. Past Due Rents.

a. If Tenant shall fail to pay any rents, or other charges, within ten (10) days after the same become due and payable, then Tenant shall also pay to Landlord a late payment service charge equal to ten percent (10%) of the amount of the payment due.

b. In the event that any payment made by Tenant is returned to Landlord for insufficient funds, Tenant shall pay to Landlord a processing fee of Seventy-Five Dollars (\$75.00) in addition to all other sums due and owing under this Lease.

c. None of the provisions of this Paragraph shall be construed to extend the date for payment or to limit Landlord in the exercise of its rights under this Lease.

8. Place of Payments and Statements. All payments and all statements and reports required to be rendered by Tenant to Landlord shall be delivered to Landlord or Landlord's designee at the Landlord's Mailing Address, or at such other place as Landlord may from time to time designate in writing.

9. Utilities.

a. Tenant shall make application for, obtain directly, be solely responsible for and promptly pay directly to the public or private utility company or governmental agency, whichever is supplying the same, as and when the same become due and payable, all charges for water and sewer, electricity, gas, telephone, and any other utility used or consumed in the Premises.

10. Taxes.

a. Landlord shall pay all real estate taxes applicable to the Premises.

b. In the event the taxing authorities include in such Taxes the value of any machinery, equipment, fixtures, inventory or other personal property or assets of Landlord, Landlord agrees to pay the entire amount of the taxes attributable to such items in addition to, but not in duplication of, the Taxes referred to above.

c. Tenant shall pay, before delinquency, all taxes assessed against any personal property of any kind owned by Tenant and used by Tenant in or about the Premises.

11. Landlord's Insurance.

a. Tenant shall not stock, use or sell any article or do anything in or about the Premises which may be prohibited by or violate any of Landlord's insurance policies or the rules and regulations of the fire insurance rating organization rating the Premises or any similar body, or which will increase any insurance rates and premiums on the Premises. If any such insurance carried by Landlord shall be canceled by the insurance carrier or if any loss or damage of any other sort is suffered by Landlord as a result of any of the aforementioned acts or omissions of Tenant or anyone claiming by, through or under Tenant, Tenant agrees to compensate, indemnify and hold Landlord harmless from all damages, costs and expenses which Landlord may sustain by reason thereof.

b. If insurance premiums for the Premises are increased due to Tenant's conduct or the nature of Tenant's business conducted on the Premises, Tenant shall pay the full cost of such increase upon demand by Landlord.

12. Maintenance of Common Areas: Tenant shall mow, trim, prune shrubs, remove snow. Tenant shall also be responsible for all trash removal from the Premises. This area shall include the bank on the northern property line constituting the northern end of the demised premises.

13. Use of Premises. Tenant agrees to use the Premises solely for the purpose of conducting the Permitted Use. Tenant agrees not to use the Premises for any other purpose. In addition, Tenant shall not serve or permit the consumption of alcohol beverages on the premises. The Tenant shall operate the restaurant as a non-smoking establishment. Tenant shall obey and comply with all federal, state and local laws and ordinances applicable to the Tenant's use of the demised premises.

14. Name. Tenant shall not change the name of the diner and restaurant without the prior written approval of the Landlord. Also, other than what currently exists, Tenant will not allow to be placed or maintain any sign, awning or canopy in, upon or outside the Premises, nor shall Tenant place on the display windows any sign, lettering, coloring or advertising matter of any nature without the prior written approval of the Landlord.

15. Assignment and Subletting. Tenant shall not voluntarily or by operation of law assign, encumber or otherwise transfer this Lease, and shall not sublet the leased premises or allow any other person to occupy or use all or any part of the leased premises without prior written consent of Landlord. Included in this prohibition is the operation of said premises under a power of attorney. No consent to any assignment or subletting shall constitute a further waiver of this section. Any such assignment or subletting without such consent shall be void and shall at Landlord's option constitute a default. In the event of any such assignment of subletting hereunder, the Tenant shall remain liable to the Landlord.

16. Repairs and Alterations.

a. Except as hereinafter provided, Landlord shall, at its expense, maintain the exterior walls, roof and plate glass windows of the building of which the Premises are a part in good condition.

b. Tenant agrees to maintain and repair during the term of this Lease the heat pump, the exterior and interior painting, the signs on the roof of the building and in front of the building, the interior of the building, including walls and floors, the furniture, fixtures and equipment described in the attached Schedule A, and all faucets, commodes, sewer, plumbing and electrical equipment necessary to operate a first class restaurant. Tenant further agrees to have the equipment inspected at Tenant's expense. Tenant shall keep the Premises and all signs in a first class and attractive condition. Tenant agrees to obtain and pay for maintenance agreements on all HVAC equipment and cooking area exhaust fan systems and to change the air conditioner filters monthly and to clean, adjust and service the heating systems every September during the lease term or extensions thereof.

c. Tenant shall make no alterations, improvements or additions in or to the Premises, nor install any equipment therein without, in each instance, obtaining the Landlord's prior written approval thereof.

17. Tenant's Failure to Repair or Perform Covenants. If Tenant shall fail to make repairs or to perform its other obligations in accordance with the provisions of this Lease, or if Landlord is required to make any repairs by reason of any act, omission, or negligence of Tenant, Landlord shall have the right, at its option, to make such repairs or to perform such obligations on behalf of and for the account of Tenant and to enter upon the Premises for such purposes, and Tenant agrees to pay the cost and expense thereof as additional rent hereunder.

18. Covenant Against Liens. Both Landlord and Tenant shall do all things necessary to prevent the filing of any mechanics' or other liens against the Premises by reason of any work, labor, services or materials performed or supplied or claimed to have been performed or supplied to Landlord or Tenant, or anyone holding the Premises, or any part thereof, through or under Landlord or Tenant. Without limiting the generality of the foregoing, Landlord and Tenant agree that the Premises shall not be subject to attachment and Landlord and Tenant shall include in all contracts and subcontracts for work to be performed on Landlord's or Tenant's behalf at the Premises provisions whereby such contractor or subcontractor acknowledges that Landlord and Tenant have no liability under the contracts and subcontracts of the other and that such contractor or subcontractor waives any right it may have to file a lien against or attach the Premises. If any such lien shall at any time be filed as the result of such contract, then Landlord or Tenant shall either cause the same to be vacated and canceled of record within twenty (20) days after the filing thereof or, if Landlord or Tenant in good faith determines that such lien should be contested, Landlord or Tenant shall furnish such security as may be necessary to release the

same as a lien against the real property. If Landlord or Tenant fails to procure a release of such lien as prescribed in this Paragraph, Landlord or Tenant shall have the right, but not the obligation, to procure a release of the lien and charge the expense incurred in so doing to the other.

19. Indemnity. Landlord and Tenant shall each indemnify and save the other harmless from all liability for any injury, loss, or damage to person or property resulting from the breach by either party of its obligations undertaken pursuant to this lease or resulting from the intentional or negligent acts or omissions of such party, its agents, representatives, servants, employees or invitees, excepting, however, any injury, loss or damage to person or property resulting from the grossly negligent or intentional acts or omissions of the other party, its agents, representatives, servants, employees or invitees. Landlord and Tenant hereby waive and release each other of and from any and all rights of recovery, claim, action or cause of action, against each other, their agents, officers, employees, and invitees, for any loss or damage that may occur to the building, the improvements, or personal property within the leased premises, by reason of fire, the elements or any other cause which could be insured against under the terms of standard fire and extended coverage insurance policies, regardless of cause or origin, including negligence of Landlord or Tenant and their agents, officers, invitees and employees.

20. Tenant's Insurance. Tenant agrees to secure and keep in force from and after the date Landlord shall deliver possession of the Premises to Tenant and throughout the Lease Term, at Tenant's own cost and expense: (i) Comprehensive General Liability Insurance on an occurrence basis with minimum limits of liability in an amount of One Million Dollars (\$1,000,000.00) for bodily injury, personal injury or death and Five Hundred Thousand Dollars (\$500,000.00) with respect to damage to property. The policy required under this Paragraph shall contain the following endorsements: (i) that such insurance may not be canceled or amended without prior notice to Landlord, sent by certified or registered mail; (ii) that Tenant shall be solely responsible for the payment of all premiums under such policy and that Landlord shall have no obligation for the payment thereof; Tenant agrees to deliver to Landlord a certificate or memoranda of insurance of the policy of insurance to be procured by Tenant within ten (10) days of the inception of such policies and, at least thirty (30) days prior to the expiration of any such policy, Tenant shall deliver to Landlord certificates or memoranda of insurance evidencing the renewal thereof.

21. Destruction.

a. If the whole of the Premises are damaged or destroyed by fire or other casualty, then this Lease and the term hereof shall automatically cease and terminate as of the date of the loss.

b. If more than twenty percent (20%) of the leasable area of the building of which the Premises forms a part shall be damaged or destroyed as aforesaid, Tenant or Landlord shall have the right, by written notice given to the other, to terminate this

Lease, such termination to be effective as of the date of title vesting in such proceeding.

22. Condemnation. If any part of the Premises shall be acquired or taken by eminent domain for any public or quasi-public use or purpose or by private purchase in lieu thereof, then this Lease and the terms hereof shall automatically cease and terminate as of the date of title vesting in such proceeding.

23. Default/Remedies/Bankruptcy.

a. The following enumerated events shall constitute an event of default (an "Event of Default") by Tenant: (i) if this Lease is assigned or the Premises is sublet except as herein provided; or (ii) if Tenant shall fail (A) to pay, when due, any rent or other charge payable hereunder within five (5) days after written notice shall have been given to Tenant; (B) to operate its business in the Premises for five (5) consecutive days or (c) to correct any default or to perform any of the other terms, covenants and conditions hereof for more than ten (10) days after written notice shall have been given to Tenant specifying the nature of such default; (iii) the filing by, on behalf of, or against Tenant of any petition or pleading to declare Tenant insolvent or unable to pay her debts or meet the obligations under the laws of the United States or any state, or if a receiver of the property of Tenant is appointed or upon the levy of execution or other taking of property, assets or the leasehold interest of Tenant by process of law or otherwise in satisfaction of any judgment, debt, or claim against Tenant.

b. Upon the occurrence of an Event of Default, Landlord shall have the following rights and remedies and, at Landlord's option, may take the following action:

(i) Landlord shall have the immediate right to re-enter the Premises, either by summary proceedings, by force or otherwise and to dispossess Tenant and all other occupants therefrom and remove and dispose of all property therein or, at Landlord's election, to store such property in a public warehouse or elsewhere at the cost and for the account of Tenant, all without service of any notice of intention to re-enter and with or without resort to legal process (which Tenant hereby expressly waives) and without Landlord being deemed guilty of trespass or becoming liable for any loss or damage which may be occasioned thereby.

(ii) Landlord shall have the right to terminate this Lease by giving Tenant a written three (3) days' notice of such cancellation.

(iii) If by reason of the occurrence of any such Event of Default, the term of this Lease shall end before the date therefor originally fixed herein, or Landlord shall re-enter the Premises, or Tenant shall be ejected, dispossessed or removed therefrom in any manner, Landlord may relet the Premises either in the name of Landlord or as agent for Tenant, for a term which, at Landlord's option, may

be less than or exceed the period of the remainder of the term hereof. Landlord shall receive the rents from such reletting and shall apply the same, first, to the payment of any indebtedness other than rent due hereunder from Tenant to Landlord second, to the payment of such expenses as Landlord may have incurred in connection with re-entering, reletting, altering, repairing, redecorating or otherwise preparing the Premises for reletting, including brokerage and attorney's fees and the residue, if any, to the fulfillment of the terms, covenants and conditions of Tenant hereunder and Tenant hereby waives all claims to the surplus, if any. Tenant agrees to be liable for and to pay Landlord any deficiency between the rent, additional rents and other charges reserved herein and the net avails of reletting. Landlord shall in no event be liable in any way whatsoever for the failure to relet the Premises or, in the event of such reletting, for failure to collect the rents reserved thereunder. Landlord is hereby authorized and empowered to make such repairs, alterations, decorations, subdivisions or other preparations for the reletting of the Premises as Landlord shall deem fit, advisable and necessary, without in any way releasing Tenant from any liability hereunder, as aforesaid.

(iv) Landlord shall have a valid and subsisting lien for the payment of all rents, charges and other sums to be paid by Tenant and reserved hereunder (including all costs and expenses incurred by Landlord in recovering possession of the Premises and the reletting thereof as provided under this Paragraph) upon Tenant's goods, wares, equipment, signs, fixtures, furniture and other personal property situated in the Premises, and such property shall not be removed therefrom without the consent of Landlord until the arrearage in rent as well as any and all other sums of money then due to Landlord hereunder shall have first been paid and discharged. Upon the occurrence of an Event of Default by Tenant, Landlord may, in addition to any other remedies provided herein or by law, enter upon the Premises and take possession of any and all goods, wares, equipment, signs, fixtures, furniture and other personal property of Tenant situated in the Premises without liability for trespass or conversion, and sell the same with or without notice at public or private sale, with or without having such property at the sale, at which Landlord or its assigns may purchase, and apply proceeds thereof less any and all expenses connected with the taking of possession and the sale of the property, as a credit against any sums due by Tenant to Landlord. Any surplus shall be paid to Tenant. The lien herein granted to Landlord shall be in addition to any Landlord's lien that may now or at any time hereafter be provided by law.

(v) Landlord may declare the entire balance of the rent for the remainder of the Lease Term to be due and payable, for which Tenant will immediately pay Landlord the difference between the rent and other charges reserved hereunder for a period which would have constituted the remainder of the Lease Term and the then present rental value of the Premises for such period, both discounted at the rate of four percent (4%) per annum to present worth. In determining the then present rental value of the Premises, the rent realized by any reletting, if such reletting is accomplished by Landlord within a reasonable time, shall

be deemed prima facie to be the rental value. Landlord may collect such amount in any manner not inconsistent with applicable law.

(vi) Landlord may cure such Event of Default in any manner after giving Tenant written notice of Landlord's intention to do so (except in the case of an emergency), in which event Tenant shall reimburse Landlord for all expenses incurred by Landlord in doing so, plus interest thereon at a lesser of the rate of eighteen percent (18%) per annum or the highest rate then permitted on account thereof by applicable law, which expenses and interest shall be additional rent.

(vii) No such re-entry or taking possession of the Premises by Landlord shall be construed as an election on its part to terminate this Lease unless written notice of such intention to be given to Tenant.

(viii) The rights and remedies herein reserved by or granted to Landlord are distinct, separate and cumulative, and the exercise of any one of them shall not be deemed to preclude, waive or prejudice Landlord's right to exercise any or all others.

(ix) In the event that Landlord must reply to letters or other communication from Tenant or Tenant's attorney, or if Landlord brings suit for the possession of the Premises, for the recovery of any sum due hereunder, or for any other relief against Tenant, declaratory or otherwise, or if Tenant brings any suit for any relief against Landlord, declaratory or otherwise, arising out of this Lease, then in each instance Tenant agrees to pay Landlord all costs, expenses and reasonable attorneys' fees that Landlord may have incurred in connection therewith.

(x) Tenant agrees that the venue and/or jurisdiction for any legal actions brought by Landlord pursuant to this Paragraph shall be in the City of Winchester.

c. If Landlord shall not be permitted to terminate this Lease as hereinabove provided because of the provisions of Title 11 of the United States Code relating to Bankruptcy, as amended ("Bankruptcy Code"), then Tenant, as a debtor-in-possession, or any trustee for Tenant agrees promptly, within no more than fifteen (15) days upon request by Landlord to the Bankruptcy Court, to assume or reject this Lease and Tenant on behalf of itself, and any trustee agrees not to seek or request any extension or adjournment of any application to assume or reject this Lease by Landlord with such Court. In such event, Tenant or any trustee for Tenant may only assume this Lease if (i) it cures or provides adequate assurance that the trustees will promptly cure any default hereunder; (ii) compensates or provides adequate assurance that Tenant will promptly compensate Landlord for any actual pecuniary loss to Landlord resulting from Tenant's defaults; and (iii) provides adequate assurance of performance during the Lease Term of all of the terms, covenants, and provisions of this Lease to be performed by Tenant. In no event after the assumption of this Lease shall any then existing default remain uncured for a period in excess of

the earlier of ten (10) days or the time period set forth herein. Adequate assurance of performance of this Lease, as set forth above, shall include, without limitation, adequate assurance (i) of the source of rent reserved hereunder; (ii) the assumption of this Lease will not breach any provision hereunder. In the event of a filing of a petition under the Bankruptcy Code, Landlord shall have no obligation to provide Tenant with any services or utilities as herein required unless Tenant shall have paid and be current in all payments of Operating Costs, utilities or other charges therefor. NOTWITHSTANDING anything herein to the contrary, the Landlord shall have the duty to mitigate its damages.

24. Default By Landlord-Remedies. In the case of Landlord's default, Tenant shall have each and all of the following remedies: Tenant shall have the option to cancel the lease for any substantial default by the Landlord. Such default shall include, but not be limited to, denying Tenant access to the Premises for any reason other than Tenant's prior default, or failure to perform with all reasonable speed and efficiency any repair which is the obligation of the Landlord under this lease. In addition, if any default by Landlord is due to its failure to make necessary repairs with reasonable dispatch after notice from Tenant that such repairs are needed, Tenant may cause the repairs to be made at its own expense. The reasonable expense of such repairs may then be deducted by Tenant from its next due rent.

In addition, Tenant shall have the right to abate its rent proportionately when Landlord, for any cause reasonably within its control, is unable or unwilling to provide the premises in the condition agreed, free from interference or obstruction.

25. Access to Premises. Landlord and its representatives shall have the right to enter upon the Premises during all regular business hours (and in emergencies at all times) for the purpose of inspecting or exhibiting the same to purchasers, mortgagees and tenants, prospective or present, or for the purpose of making such repairs, additions, alterations or improvements thereto or thereon or to the building of which it forms a part as Landlord may deem desirable or necessary, and for any other lawful purpose. During the last six (6) months of the Lease Term, Landlord shall have the right to maintain a "for rent" sign on the Premises.

26. Landlord's Financing/Subordination/Attornment/Estoppel Certificates.

a. Tenant agrees to give any mortgagee or any holder of a note secured by a deed of trust ("Mortgagee") of the Premises, by registered or certified mail, given at the same time Tenant gives notice to Landlord, a copy of any notice of default served upon Landlord by Tenant, provided that prior to such notice Tenant has been notified in writing of the address of such Mortgagee. Tenant further agrees that if Landlord shall have failed to cure such default within thirty (30) days after such notice to Landlord (or if such default cannot be cured or corrected within that time, then such additional time as may be necessary if Landlord has commenced within such thirty (30) days and is diligently pursuing the remedies or steps necessary to cure or correct such default), then the Mortgagee shall have an additional thirty (30) days

within which to cure or correct such default (or if such default cannot be cured or corrected within that time, then such additional time as may be necessary if such Mortgagee has commenced within such thirty (30) days and is diligently pursuing the remedies or steps necessary to cure or correct such default, including, without limitation, commencement of foreclosure proceedings if necessary to effect such a cure). Until the time allowed as aforesaid for the Mortgagee to cure such default has expired without cure, Tenant waives any right at law or in equity to terminate this Lease on account of Landlord's default.

b. Subject to the provisions of subparagraph (e) hereof, Landlord and Tenant agree that this Lease shall be subject and subordinate at all times to all covenants, restrictions, easements and encumbrances now or hereafter affecting Landlord's title of the Premises and to the lien of any first mortgages or deed of trust in any amounts and to any lien resulting from any other method of financing or refinancing, and all advances thereon, which may now or hereafter be placed against or affect any or all of the land and/or the Premises, and to all renewals, modifications, consolidations, participations, replacements and extensions thereof. The aforesaid provisions shall be self-operative and no further instrument of subordination shall be necessary unless required by any such Mortgage. Notwithstanding anything herein to the contrary, in the event any Mortgagee requests that this Lease be made superior, rather than subordinate, to the lien of any such mortgage or deed of trust, Tenant agrees to execute and deliver, within ten (10) days following Landlord's written request therefor and without charge, any and all documents effectuating such priority.

c. Tenant agrees that in the event of a sale, transfer or assignment of Landlord's interest in the Premises, or in the event any proceedings are brought for the foreclosure or exercise of any power of sale under any mortgage, deed of trust or other method of financing or refinancing made by Landlord covering the Premises, to attorn to and to recognize such transferee or purchaser.

3
d. Within ten (10) days after request therefor by Landlord, Tenant agrees to execute and deliver a certificate, in the form presented by Landlord, addressed to any proposed Mortgagee, any purchaser of the Premises and/or Landlord, dealing with, including, without limitation, the following: (i) whether Tenant is in full and complete possession of the Premises, and whether such possession has been delivered by Landlord or its predecessor and accepted by Tenant; (ii) whether any improvements required to be furnished by Landlord by the terms of this Lease have been completed in all respects to the satisfaction of Tenant; (iii) whether this Lease is in full force and effect and whether it has been amended, modified, supplemented or superseded; (iv) whether there is any existing default on the part of Landlord in the performance of any covenant, agreement or condition contained in this Lease to be performed by Landlord; (v) whether Tenant has any actual or pending claim against Landlord; (vi) whether any rents or other charges have been prepaid by Tenant; and (vii) that the addressee of said certificate may rely on the representations therein made; and certifying as to the dates of commencement and termination of the Lease

Term, the date on which rents commenced to accrue under this Lease, and the date through which rents and other charges hereunder have been paid.

e. Non-disturbance of Tenant. In the event of the exercise of the power of sale contained in the Deed of Trust, Deed in Lieu of Foreclosure or similar conveyance, or by any foreclosure or any action or proceeding instituted under or in connection with the Deed of Trust, or in case the Lender takes possession of the property described in the Deed of Trust pursuant to any provisions thereof, prior to the expiration of the Lease according to its terms, including any extensions or renewals thereof, Lender or any successor in interest of the Landlord by reason of such action or proceeding, its successors or assigns (hereinafter referred to as the "Purchaser") will take title to the Premises subject to the terms of the Lease. So long as no default by Tenant then exists under any of the terms, covenants, agreements and conditions of the Lease, and further subject to the rights of the Landlord set forth in the Lease:

(1) Purchaser shall not disturb Tenant's quiet and peaceful possession and enjoyment of the property under the Lease; and,

(2) Subject to the terms hereof, the Lease shall continue in full force and effect, and Purchaser shall recognize the Lease.

f. Attornment by Tenant. Tenant hereby covenants and agrees to make full and complete attornment to Purchaser as Tenant's Landlord for the balance of the term of the Lease, including any extensions or renewals thereof now provided thereunder, upon the same terms, covenants and conditions as therein provided, and Tenant will thereafter make all rent payments directly to Purchaser as provided for in the Lease; provided, however, Tenant shall be under no obligation to pay rent to Purchaser until Tenant receives written notice the Purchaser has succeeded to the interest of the Landlord under the Lease.

27. Quiet Enjoyment. Tenant, upon paying the rents herein reserved and performing and observing all of the other terms, covenants and conditions of this Lease on the Tenant's part to be performed and observed hereunder, shall peaceably and quietly have, hold and enjoy the Premises during the Lease Term, subject, to the terms of this Lease and to any mortgages, ground or underlying leases, agreements and encumbrances to which this Lease is or may be subordinated.

28. Force Majeure. Landlord shall be excused for any period or periods of delay in the performance of any of Landlord's obligations hereunder when delayed, hindered or prevented from so doing by any cause or causes beyond Landlord's control, which causes shall include, without limitation, all labor disputes, riots, civil commotion or insurrection, war or war-like operations, invasion, rebellion, military or usurped power, sabotage, governmental restrictions, regulations or controls (including delays attributable to the actions and requirement of federal, state and

local environmental protection agencies respecting water pollution and/or air pollution, storm drainage, sanitary sewer disposal, energy shortages and/or like matters), inability to obtain any materials, services or financing, fire or other casualties, or acts of God. If as a result of any of such events Landlord shall be unable to exercise any right or option within any time limit provided therefor in this Lease, such time limit shall be deemed extended for a period equal to the duration of such event.

29. Surrender of Premises. Upon the expiration or sooner termination of the Lease Term, Tenant agrees, without the necessity of notice, to quit and surrender the Premises, broom-clean, in good condition and repair, reasonable wear and tear excepted, together with all keys and combinations to locks, safes and vaults and all improvements, alterations, additions, fixtures and equipment at any time made or installed in, upon or to the interior or exterior of the Premises, all of which shall thereupon become the property of Landlord without any claim by Tenant therefor, but the surrender of such property to Landlord shall not be deemed to be a payment of rent or in lieu of any rent reserved hereunder. Before surrendering the Premises, Tenant shall remove all of Tenant's said personal property and, at Landlord's option, Tenant shall also remove as directed by Landlord any improvements, alterations, additions, fixtures, equipment and decorations at any time made or installed by Tenant in, upon or to the interior or exterior of the Premises, and Tenant further agrees to repair any damage caused by such removal. If Tenant shall fail to remove any of Tenant's personal property and trade fixtures, such personal property and trade fixtures shall, at the option of Landlord, either (i) be deemed abandoned and become the exclusive property of Landlord; or (ii) removed and stored by Landlord, at the expense of Tenant, without further notice to or demand upon Tenant, and Landlord may hold Tenant responsible for any and all charges and expenses incurred by Landlord therefor. If the Premises are not surrendered as and when aforesaid, Tenant shall indemnify Landlord against all loss or liability resulting from the delay by Tenant in so surrendering the same, including, without limitation, any claims made by any succeeding occupant founded on such delay. Tenant's obligations under this Paragraph shall survive the expiration or sooner termination of the Lease Term.

30. Holding Over. In the event Tenant remains in possession of the Premises after the expiration of the Lease Term (or any renewal thereof) without the execution of a new lease or other written agreement, such holding over shall, in the absence of a written agreement to the contrary, be deemed to have created and be construed to be a tenancy from month-to-month terminable on thirty (30) days' written notice by either party to the other, at a monthly rental equal to twice the sum of the monthly installment of Rent payable during the last month of the Lease Term. Tenant shall not interpose any counterclaim or counterclaims in a summary proceeding or other action based on holdover.

31. Relationship of Parties. Nothing contained in this Lease shall be deemed to constitute or be construed to create the relationship of principal and

agent, partnership, joint venturers or any other relationship between the parties hereto, other than the relationship of landlord and tenant.

32. No Waiver. The failure of Landlord to insist upon the strict performance of any provisions of this Lease, or the failure of Landlord to exercise any right, option or remedy hereby reserved shall not be construed as a waiver for the future of any such provision, right, option or remedy or as a waiver of a subsequent breach thereof. No provision of this Lease shall be deemed to have been waived unless such waiver shall be in writing signed by Landlord. No payment by Tenant or receipt by Landlord of a lesser amount than the rents and/or other charges hereby reserved shall be deemed to be other than on account of the earliest rents and/or charges then unpaid, nor shall any endorsement or statement on any check or any letter accompanying any check or payment by Tenant be deemed an accord and satisfaction and Landlord may accept such check or payment without prejudice to Landlord's right to recover the balance of such rents and/or other charges due or Landlord may pursue any other remedy in this Lease provided.

33. Notices. Every notice, demand, request or other communication which may be or is required to be given under this Lease or by law shall be sent by United States Certified or Registered Mail, postage prepaid, return receipt requested, or sent by Federal Express or other overnight or express mail delivery service and shall be addressed: (i) if to Landlord, to Landlord's Mailing Address; and (ii) if to the Tenant, to Tenant's Mailing Address. Either party may designate, by written notice to the other party, any other address for such purposes.

34. Partial Invalidity. If any provision of this Lease or the application thereof to any person or circumstance shall to any extent be held invalid, then the remainder of this Lease or the application of such provision to persons or circumstances other than those as to which it is held invalid shall not be affected thereby, and each provision of this Lease shall be valid and enforced to the fullest extent permitted by law.

35. Agents. Tenant acknowledges that Landlord may manage the Premises through agents and agrees that Landlord's agents shall be entitled to the same rights of access to the Premises as Landlord and shall benefit from all covenants of Tenant with regard to indemnification, insurance and limitations of liability under the terms and conditions of this Lease to the same extent as Landlord.

36. Provisions Binding. Except as otherwise expressly provided in this Lease, all covenants, conditions and provisions of this Lease shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors and assigns. Each provision of this Lease to be performed by Tenant shall be construed to be both a covenant and a condition, and if there shall be more than one Tenant, they shall all be bound jointly and severally by the provisions of this Lease.

37. Entire Agreement. This Lease, including the Exhibits, Riders and/or Addenda, if any, attached hereto, sets forth the entire agreement between the parties and shall not be modified except by an instrument in writing executed by Landlord and Tenant. The submission of this document for examination does not constitute an offer to lease or a reservation of an option for the Premises, and becomes effective only upon execution and delivery thereof by Landlord and Tenant.

38. Survival of Obligations. The provisions of this Lease with respect to any obligation of Tenant to pay any sum owing in order to perform any act after the expiration or other termination of this Lease shall survive the expiration or other termination of this Lease.

39. Counterclaim and Jury Trial. In the event that Landlord commences any summary proceedings or action for nonpayment of rent or other charges provided for in this Lease, Tenant shall not interpose any counterclaim of any nature or description in any such proceeding or action. Tenant and Landlord both waive a trial by jury of any or all issues arising in any action or proceeding between the parties hereto or their successors, under or connected with this Lease, or any of its provisions.

40. Representations. Tenant acknowledges that neither Landlord nor Landlord's agents, employees or contractors have made any representations or promises with respect to the Premises, except as expressly set forth herein.

41. Waiver of Liability. In the event Landlord conveys or transfers its interest in the Premises or in this Lease, except as collateral security for a loan, upon such conveyance, transfer or lease, Landlord (and in the case of any subsequent conveyances, transfers or leases the then grantor, lessor or transferor) shall be entirely released and relieved from all liability with respect to the performance of any covenants and obligations on the part of Landlord to be performed hereunder from and after the date of such conveyance, transfer or lease, provided that any amount then due and payable to Tenant by Landlord (or by the then grantor, lessor or transferor) or any other obligation then to be performed by Landlord (or by the then grantor, lessor or transferor) or such payment or performance shall be assumed by the grantee, lessee or transferee, it being intended hereby that the covenants and obligations on the part of Landlord to be performed hereunder, subject as aforesaid, shall be binding on Landlord, its successors and assigns only during and in respect of their respective periods of ownership of an interest in this Lease.

42. Choice of Law. This lease shall be construed in accordance with the laws of the Commonwealth of Virginia.

43. Guaranty. Diane Marie Ashby hereby unconditionally guarantees to the Landlord the payment of all rent, damages, fees, costs and the performance of any and all obligations of the Tenant under this Lease and any extensions and

modifications thereof as well as liability under any holdover provisions. The Guarantor hereby waives notice from the Landlord of any breach by Tenant, extension of the lease, modification of the lease, or any change to the rental agreement between the Tenant and Landlord. Guarantor also WAIVES any notice of any breach, notice to cure, right to cure, waiver, notice to quit, forbearance by Landlord, or forgiveness by the Landlord between the Tenant and Landlord. Guarantor is liable for all costs, damages and reasonable attorney's fees incurred by the Landlord in collecting under the Lease as well as collecting against the Guarantor hereunder.

IN WITNESS WHEREOF, the parties hereto have respectively signed and sealed this Lease.

The Bessie M. Glover Trust, Landlord

By: Robert E. Glover
Robert E. Glover, Trustee

By: Bessie M. Glover, Trustee
Bessie M. Glover, Trustee

Diane's Diner, LLC, Tenant

By: Diane M Ashby Diane's Diner LLC
Diane M Ashby, Guarantor
Diane Marie Ashby

Schedule A
Leased Equipment (Title retained by Lessor)

1. Commercial Refrigerator
2. FOUR (4) Stainless Steel Tables
3. Ice Machine
4. Single Deerfield Refrigerator
5. Double Deerfield Refrigerator
6. Hoshizaki Freezer
7. Amana Microwave Oven
8. Wyott Cooker
9. Jackson Dishwasher
10. Six Burner Gas Stove (VULCAN)
11. Food Warmer (Three Compartment with Stand)
12. Toastmaster Bun & Food Warmer
13. Hatco Toast Rite Toaster
14. Two (2) Merco Triple Heat Lamps
15. Fire Extinguisher (wall mount)
16. Grill
17. Deep Fat Fryer

18. Stand for Grill & Fryer
19. Eight (8) Booths with Tables
20. Stainless Steel Sink and Drain Boards in Kitchen
21. Hood and Exhaust Fan over Gas Stove
22. Fire Suppression System over Stove
23. Exhaust Fan for Grill
24. Fire Suppression System for Grill
25. Salad Refrigerated Unit
26. Counter
27. Stools
28. Venetian Blinds
29. Roof and Ground Signs
30. Outside Storage Building

GLOVER EXHIBIT # B

RANDALL R. HAMILTON, P.C.

ATTORNEY AT LAW
113 SOUTH KENT STREET
WINCHESTER, VIRGINIA 22601-5051
(540) 667-1212
FACSIMILE (540) 667-3356
EMAIL hamilton@visuallink.com

August 26, 2009

Jeffery R. Patton, Esquire
Jeffery R. Patton, P.L.L.C.
302 West Boscawen Street
Winchester, Virginia 22601

Re: Amherst Diner

Dear Jeff:

I represent Rich Bluff LLC, the owner/landlord of the Amherst Diner.

If you no longer represent Ms. Ashby, I would appreciate your forwarding this letter onto her, or provide me with her preferred mailing address so I can write to her directly. So that I know you are not on vacation, will you please telephone my office when you receive this letter. I request this because there is action Ms. Ashby may wish to take as outlined in this letter which is time sensitive.

Mr. and Mrs. Glover have requested that I provide you with the benefit of some background information regarding this commercial rental property.

When Ms. Ashby approached Mrs. Glover about taking over the business, her only experience in the restaurant business was waiting tables. She had no experience in operating a restaurant business. In light of such inexperience, Mrs. Glover was pleased to offer and provide assistance and guidance which was frequently requested by Ms. Ashby.

When Ms. Ashby took over the Amherst Diner, it was a turn-key business. The restaurant was fully equipped with everything she needed to operate. All restaurant equipment was in A-1 condition.

Ms. Ashby did not have the money to stock the restaurant. Mrs. Glover loaned her \$9,000.00, interest free, to purchase food and supplies to get the business started.

Ms. Ashby informed Mrs. Glover that you and her accountant told her that she should only be paying \$18.00 per square foot for a restaurant. When the lease commenced in 2006, the monthly rental was \$2,300.00. The monthly rent increased by \$100.00 each year thereafter. Ms. Ashby is paying \$2,500.00 now, which is more than

\$18.00 per square foot. However, what is not taken into consideration is that the restaurant is fully equipped. If Ms. Ashby continues to feel that her rent is too high, then she should find a fully equipped restaurant to lease at \$18.00 per square foot when her lease term with Rich Bluff expires.

Mrs. Glover did not require Ms. Ashby to put a deposit down when she signed the 2006 lease.

The 2006 lease restricts the parking available for the Diner. Now that the gas pumps have been taken out of the service station area, there is extra parking for the Diner, bringing in more customers and more money. Ms. Ashby has not been required to pay any extra rent for the expanded parking facilities.

Pursuant to paragraph 5 of the lease, the current lease term expires October 31, 2009. Paragraph 30 of the lease provides that the lease converts to month to month tenancy at the expiration of the term at double the monthly rent.

If Ms. Ashby wishes to continue to rent the property, it shall be on the following non-negotiable terms.

1. The new lease term is from month to month as previously stated. New monthly rent shall be \$3,500.00 which is \$1,500.00 less than that called for by the doubling feature of the lease. The new monthly rent will include the use of the expanded parking facilities to be shared with Car Doctors.

2. Paragraph 7., Past Due Rents., subparagraph a of the Lease dated November 1, 2006, is hereby modified to read as follows:

If Tenant shall fail to pay any rents which, pursuant to Paragraph 6, is due on the first day of each and every calendar month, or other charges, after the same become due and payable, the Tenant shall also pay to Landlord a late payment service charge equal to ten percent (10%) of the amount of the payment due.

3. If there are to be any service calls for the diner, only the following shall initially be contacted:

For electrical, refrigeration or air conditioning - Bill Black's Electric, Inc. 667-7609
For plumbing service - G & S Plumbing, LLC 722-2299

If the foregoing individuals cannot be contacted in an emergency, only a licensed contractor may be contacted instead. For any other work, only a licensed contractor may

be contacted.

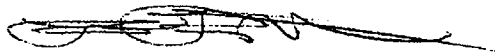
4. This letter is in response to two letters you sent to my client on behalf of Ms. Ashby. Paragraph 23, b., (ix) of the lease provides that the Tenant will pay the Landlord's attorney's fees in responding to such communication. I have spent 3.0 hours on this matter in meeting with my client, reviewing the lease and writing this letter. My hourly rate is \$185.00 per hour. Therefore, your client shall pay to Mrs. Glover the sum \$555.00 to cover her legal costs.

5. Ms. Ashby has two weeks from the date of this letter to accept this proposal by signing where indicated below, paying Mrs. Glover's legal costs and returning this letter to my office. She may then continue to lease the property pursuant to the terms of the aforesaid lease dated November 1, 2006, between Rich Bluff LLC, Assignee of Bessie M. Glover Trust, Landlord and Diane's Diner LLC, Tenant, and Diane Marie Ashby, Guarantor, which, except as herein modified, is still in full force and effect, on a month to month basis. Such modifications are by this reference, hereby made a part of such lease.

If the foregoing terms are not accepted by Ms. Ashby as aforesaid, surrender of the premises in strict compliance with paragraph 29 of the lease shall be expected.

With kind regards,

Sincerely,



Randall R. Hamilton

RRH/srw

cc: Rich Bluff LLC

I, Diane Marie Ashby, hereby accept the terms outlined in the foregoing letter and agree to abide them.

Date: 9-9-, 2009.

DIANE'S DINER LLC
BY: Diane's Diner LLC
Diane Marie Ashby, Manager/Member
Diane M Ashby
Diane Marie Ashby, Guarantor

GLOVER EXHIBIT # C

Rich Bluff LLC
Bessie M Glover Trust
316 Ridge Avenue
Winchester, VA 22601

Phone: 540 667 4822
Email: r.glover1@verizon.net

April 30, 2014

Diane Ashby
Diane's Diner, LLC
109 Inca Trail
Winchester, VA 22602

Dear Diane,

As you are aware your lease calls for you to maintain the plumbing, electrical system, and our equipment having it serviced and repaired as needed.

After we notified you in March 2014 that we needed records for the servicing of the fire suppression system and hood cleaning you contacted the fire suppression people which led to the replacing of the old system. When it was tested this month it failed and had to be upgraded to meet the current fire code. We are not sure as to what caused it to fail the test since you hadn't had it tested on schedule.

We have learned that you were advised in April 2013, a year ago when the system was last tested, that it was not in compliance with the current fire code. You were also given a proposal for installing a new system. You did not tell us about this very important development and ignored this notice. When you were contacted in October 2013 to set a date for the required 6 month servicing of the suppression system you did not take their call although you were at the diner and never returned their call. You had to know it was important that you talk with them and schedule a testing.

There has been maintenance issues that we choose to overlook, but not looking after the fire suppression system is just too serious for us to ignore. You had the responsibility of having the systems serviced every six months as required by the fire code and the insurance company and you should have told us about the notice you were given last April that the system was outdated. Had there been a fire in all likelihood our insurance company would not have covered the damage which may have consumed the entire building.

Because of your negligence regarding this issue as well as other instances where you did not comply with the terms of the lease regarding maintenance we are

to take over in your place, we will give consideration to such tenant, but we have no obligation to approve such person, but will give consideration to such person as continuation of service to the patrons and employees is obviously a concern. We are sorry that it has come to this, but the situation has become intolerable.

If you have any questions, please contact our attorney John Truban, telephone 540-667-0889.

Sincerely,

Bessie M Glover, Trustee and
Manager of Rich Bluff. LLC

GLOVER EXHIBIT # D

Rich Bluff LLC.
316 Ridge Avenue
Winchester, VA 22604

Phone: 540 667 4822
Email: r.glover1@verizon.net

July 23, 2014

J Douglas McCarthy
McCarthy & Akers
302 West Boscawen Street
Winchester, VA 22601

RE: Amherst Diner Trademark

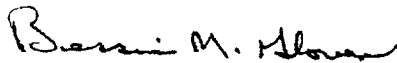
Dear Mr. McCarthy,

We understand that you represented Ms. Diane M. Ashby in the securing of the trademark, Amherst Diner.

This letter is to inform you that we are contesting the granting of the mark to Ms. Ashby.

Attached is our pleading to the USPTO.

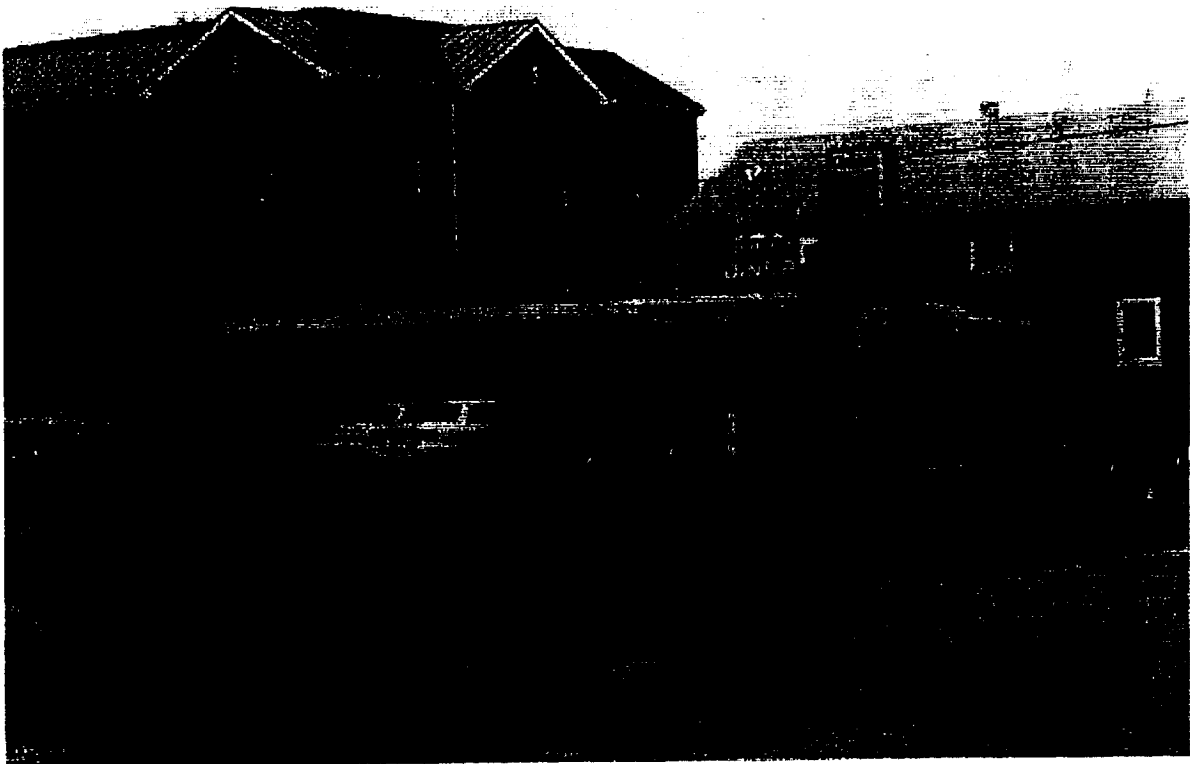
Sincerely,


Bessie M. Glover

cc: Diane M Ashby
109 Inca Trail
Winchester, VA 22602

Subject: Trademark Dispute
Amherst Diner
334 Amherst Street
Winchester, VA 22601

1. **History**: My husband built the diner in 1958 and it has been family owned ever since. At the time it was built my husband named it Amherst Diner and installed a roof and ground sign displaying the name. He said that one of the most difficult decisions he had to make was deciding what to name the diner and yet the answer was so obvious. He said that the light bulb suddenly lit up and he mentioned "Amherst Diner" and everyone liked it.



2. **Prior leases** have stated the Lessee "shall not change the name of the Diner without written permission of the Lessor" and the Lessor retained ownership of the two signs.

3. **Lease Terms:** In 2006 we entered into a three year lease with Diane M. Ashby. The lease stated that the location she was leasing was the Amherst Diner, 334 Amherst Street, Winchester, VA 22601.

Below is copied from the lease.

a. DATE OF LEASE: November 1, 2006

b. NAME AND ADDRESS OF PREMISES:

AMHERST DINER
334 Amherst Street
Winchester, Virginia 22601

Below is a paragraph copied from the lease referring to the name.

Name. Tenant shall not change the name of the diner and restaurant without the prior written approval of the Landlord. Also, other than what currently exists, Tenant will not allow to be placed or maintain any sign, awning or canopy in, upon or outside the premises, nor shall Tenant place on the display windows any sign, lettering, coloring or advertising matter of any nature without the prior written approval of the Landlord.

Repairs and Maintenance: Following is an excerpt from the lease that refers to the signs.

Tenant agrees to maintain and repair during the term of this Lease the heat pump, the exterior and interior painting, **the signs on the roof of the building and in front of the building**, the interior of the building, including walls and floors, the furniture, fixtures and equipment described in the attached Schedule A. The signs are # 29 on the list.

4. In July 2007 I created an LLC and the lease was transferred in its entirety from the Bessie M Glover, Trust to the LLC. of which I am the owner and Trustee.

5. In September 2009 our attorney prepared an addendum to the 2006 lease with several changes, namely the tenant, Diane Ashby, was on a month to month lease, a rent adjustment, and she was to use licensed contractors for repairs with all other terms of the 2006 lease remaining in effect. Ashby signed this addendum.
6. On May 1st. of this year we served Ashby with an eviction notice. She left the Diner June 30th. During this time period we learned that Ashby had trademarked the Amherst Diner name in 2010.
7. Ashby is currently in the process of opening another eating place and threatens to use the Amherst Diner name. In addition she has told some of our prospective tenants that they will not be able to use the Amherst Diner name. She has also said the same on Facebook.
8. The Amherst Diner is considered to be a local landmark operating under the same name for 56 years. The lease terms referencing the name and signs as well as the long tradition of the name being associated with the diner, 56 years, proves us to be the rightful owners of the name.
9. Ashby was an employee of the previous Lessee who operated with the Amherst Diner name. Ashby was well aware of the diner being known for years as the Amherst Diner when she applied for the trademark.
10. It is our contention that Ashby did not own the mark and we consider that we in effect licensed Ashby the use of the name. In addition we believe Ashby obtained the trademark improperly and fraudulently knowing that the Amherst Diner was a landmark and that the name had been in use for many years prior to her application. We request her trademark be rescinded.

Schedule A

Leased Equipment (Title retained by Lessor)

1. Commercial Refrigerator
2. FOUR (4) Stainless Steel Tables
3. Ice Machine
4. Single Deerfield Refrigerator
5. Double Deerfield Refrigerator
6. Hoshizaki Freezer
7. Amana Microwave Oven
8. Wyott Cooker
9. Jackson Dishwasher
10. Six Burner Gas Stove (VULCAN)
11. Food Warmer (Three Compartment with Stand
12. Toastmaster Bun & Food Warmer
13. Hatco Toast RiteToaster
14. Two (2) Merco Triple Heat Lamps
15. Fire Extinguisher (wall mount)
16. Grill
17. Deep Fat Fryer
18. Stand for Grill & Fryer
19. Eight (8) Booths with Tables
20. Stainless Steel Sink and Drain Boards in Kitchen
21. Hood and Exhaust Fan over Gas Stove
22. Fire Suppression System over Stove
23. Exhaust Fan for Grill
24. Fire Suppression System for Grill
25. Salad Refrigerated Unit
26. Counter
27. Stools
28. Venetian Blinds
- 29. Roof and Ground Signs**
30. Outside Storage Building



VIRGINIA:
IN THE CIRCUIT COURT FOR THE CITY OF WINCHESTER

BESSIE M. GLOVER TRUST
BESSIE M. GLOVER
ROBERT GLOVER
(A/K/A RICH BLUFF, LLC)

PLAINTIFFS

V.

CASE # CL14 000384-00

DIANE'S DINER, LLC

And,

DIANE ASHBY, PERSONNALY

DEFENDANTS

FILED
WINCHESTER CIRCUIT COURT
TERRY H. WHITTLE, CLERK
2014 AUG -7 PM 4:06

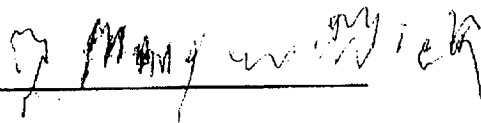
MOTIOM FOR PARTIAL SUMMARY JUDGMENT

COMES NOW THE PLAINTIFFS by counsel who for their motion does state in support thereof as follows:

- 1) The plaintiffs move that the Court grant their motion partially that the law of the case is the written lease of 2006 between the parties as amended in writing in 2009, and the oral lease claimed by the defendants is legally null and void as violating the terms of the written leases. See complaint exhibits A and B here adopted by reference and incorporate hereto.

Wherefore, the plaintiffs pray to the court that a partial summary judgment in this cause be granted by the court.

By:



Law Offices of J. Benjamin Dick
J. Benjamin Dick, Esq.
Counsel for the Plaintiffs
421 Park St. Suite 2
Charlottesville, Va 22902
(434) 977-6607
(434) 825-5246 mobile

Return

COMMONWEALTH OF VIRGINIA



WINCHESTER CIRCUIT COURT
Civil Division
5 NORTH KENT STREET
WINCHESTER VA
(540) 667-5770

Proof of Service

Virginia:
In the WINCHESTER CIRCUIT COURT

Case number: 840CL14000384-00
Service number: 002
Service filed: July 31, 2014
Judge: JEW

Served by: SPECIAL PROCESS SERVER
Style of case: BESSIE M GLOVER; TRUST vs DIANE'S DINER LLC
Service on: DIANE ASHBY
2235 VALOR DRIVE
WINCHESTER VA 22601

Attorney: DICK, J BENJAMIN
421 PARK ST STE 2
CHARLOTTESVILLE VA 22902

Instructions: SERVE COMPLAINT WITH MOTION FOR PARTIAL SUMMARY JUDGMENT

Returns shall be made hereon, showing service of Summons issued Thursday, August 07, 2014 with a copy of the Complaint filed Thursday, July 31, 2014 attached.

Hearing date :

Service issued: Thursday, August 07, 2014

For Sheriff Use Only

SERVE

COMMONWEALTH OF VIRGINIA



WINCHESTER CIRCUIT COURT
Civil Division
5 NORTH KENT STREET
WINCHESTER VA
(540) 667-5770

Summons

To: DIANE ASHBY
2235 VALOR DRIVE
WINCHESTER VA 22601

Case No. 840CL14000384-00

The party upon whom this summons and the attached complaint are served is hereby notified that unless within 21 days after such service, response is made by filing in the clerk's office of this court a pleading in writing, in proper legal form, the allegations and charges may be taken as admitted and the court may enter an order, judgment, or decree against such party either by default or after hearing evidence.

Appearance in person is not required by this summons.

Done in the name of the Commonwealth of Virginia on, Thursday, August 07, 2014

Clerk of Court: TERRY H WHITTLE

by 
(CLERK/DEPUTY CLERK)

Instructions: SERVE COMPLAINT WITH MOTION FOR PARTIAL SUMMARY JUDGMENT

Hearing Official:

Attorney's name: DICK, J BENJAMIN
421 PARK ST STE 2
CHARLOTTESVILLE VA 22902

Return

COMMONWEALTH OF VIRGINIA



WINCHESTER CIRCUIT COURT
Civil Division
5 NORTH KENT STREET
WINCHESTER VA
(540) 667-5770

Proof of Service

Virginia:
In the WINCHESTER CIRCUIT COURT

Case number: 840CL14000384-00
Service number: 001
Service filed: August 07, 2014
Judge: JEW

Served by: SPECIAL PROCESS SERVER
Style of case: BESSIE M GLOVER; TRUST vs DIANE'S DINER LLC
Service on: DIANE'S DINER LLC
DIANE ASHBY, PRESIDENT
2235 VALOR DRIVE
WINCHESTER VA 22601

Attorney: DICK, J BENJAMIN
421 PARK STREET STE 2
CHARLOTTESVILLE VA 22902

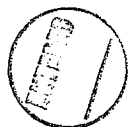
Instructions: SERVE COMPLAINT AND MOTION FOR PARTIAL SUMMARY JUDGMENT

Returns shall be made hereon, showing service of Summons issued Thursday, August 07, 2014 with a copy of the Complaint filed Thursday, August 07, 2014 attached.

Hearing date :
Service issued: Thursday, August 07, 2014

For Sheriff Use Only

2015 FEB 13 PM 12:14



SERVICE OTHER THAN BY VIRGINIA SHERIFF
VA. CODE 8.01-291, 8.01-320, 8.01-325

840 CL 14000384-01
CASE NO. _____

WINCHESTER CIRCUIT COURT

BESSIE M. GLOVER; TRUST vs DIANE'S DINER LLC
DIANE'S DINER LLC DIANE ASHBY PRESIDENT 2235 VALOR DR. WINCHESTER, VA. 22601
IS THE NAME AND ADDRESS OF THE PERSON UPON WHOM SERVICE OF THE FOLLOWING IS TO BE MADE

___ NOTICE OF MOTION FOR JUDGMENT AND MOTION FOR JUDGEMENT

SUMMONS AND ATTACHED COMPLAINT

___ WITNESS SUBPOENA ___ SUBPOENA DUCES TECUM

___ NOTICE TO TAKE DEPOSITIONS

I, the undersigned swear/affirm that:
I am a private process server, I am not a party to or otherwise interested in, the subject matter in controversy in this case
I am over the age of eighteen (18) years old.

I served, as shown below, the above-named person upon whom service of process was to be made with copies described above.

DATE AND TIME OF SERVICE 2-12-15 1:15 pm

PLACE OF SERVICE 2235 VALOR DR. WINCHESTER, VA. 22601

METHOD OF SERVICE PERSONAL SERVICE
___ Being unable to make personal service, a copy was delivered in the following manner
___ Family/staff, Name _____

Relation _____

AGE _____

___ Posted on the front door or such other door as appears to be main entrance of usual place of abode

TRI COUNTY PRIVATE INVESTIGATION AGENCY
P.O. BOX 1494
WINCHESTER, VIRGINIA 22604
540-722-3701
VA. LICENSE 11-1441

2015 FEB 13 PM 12:14
RECEIVED
FEB 13 2015
CLERK

2-12-15
DATE

[Signature]
SIGNATURE

NAME (PRINT OR TYPE) DANNY M. McFARLAND

STATE OF VIRGINIA COUNTY OF FREDERICK

Subscribed and sworn to / affirmed before me this 12 day of February 2015

By [Signature]

Notary Public

2/12/15
Date

DELBERT H. FRYE
Notary Public
Commonwealth of Virginia
Reg. # 252360
My Commission Expires September 30, 2017

VIRGINIA:
IN THE CIRCUIT COURT FOR THE CITY OF WINCHESTER

BESSIE M. GLOVER TRUST
BESSIE M. GLOVER
ROBERT GLOVER
(A/K/A RICH BLUFF, LLC)

PLAINTIFFS

V.

CASE # CL14000384-00

DIANE'S DINER, LLC

And,

DIANE ASHBY, PERSONNALLY

DEFENDANTS

PLAINTIFFS FIRST REQUEST FOR ADMISSIONS

COMES NOW THE PLAINTIFFS by counsel per the rules of the Virginia Supreme Court and for their first requests for admissions, either deny or admit the requests or submit an explanation why defendants can neither admit nor deny the requests, to wit:

- 1) Admit or deny you signed the 2006 written lease to rent the premises, as amended in 2009, at 334 Amherst St. known as Amherst Diner.
- 2) Admit or deny that your lawyer Jeff Patton presented the 2009 amendments to you for signature in 2009 and you signed it.
- 3) Admit or deny that these are the only leases you signed in agreement.

2015 FEB 13 PM 2:09

411
MAY 11 11:00
CLERK'S OFFICE

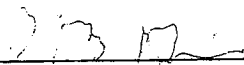
- 4) Admit or deny you read the 2006 and 2009 leases.
- 5) Admit or deny the 2006 lease amended in 2009, is the agreement you entered as a tenant that listed your terms, conditions, and duties as tenant.
- 6) Admit or deny you understood the same.
- 7) Admit or deny you had not maintained the stove's fire suppression system at the time of notice of termination from the landlord.
- 8) Admit or deny you took all diner plates, cups, and saucers.
- 9) Admit or deny you were to leave the restaurant clean on vacating the premises.
- 10) Admit or deny that you sat in a booth with the landlord and discussed business of the restaurant with the landlord in the presence of dining customers.
- 11) Admit or deny that you registered the "Amherst Diner" name in the US Dept. of Patents and Trademarks as your property without any notice to the landlord, written or otherwise.
- 12) Admit or deny you did so in 2010.
- 13) Admit or deny that you publicly and on Facebook declared you "owned" the name "Amherst Diner".

14) Admit or deny you rented "the premises" per the language of the 2006 lease.

15) Admit or deny the same 2006 lease did not say you rented the name "Amherst Diner".

WHEREFORE, the plaintiffs request answers to these above requests within 21 days of the date of service upon defendants.

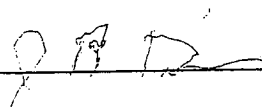
I ASKED FOR THIS:



J. BENJAMIN DICK, ESQ.
Counsel for Plaintiffs

CERTIFICATE

I certify that the above was served upon defendants this ____ day of February 2015.





VIRGINIA:
IN THE CIRCUIT COURT FOR THE CITY OF WINCHESTER

BESSIE M. GLOVER TRUST
BESSIE M. GLOVER
ROBERT GLOVER
(A/K/A RICH BLUFF, LLC)

PLAINTIFFS

V.

CASE # CL14000384-00

DIANE'S DINER, LLC

And,

DIANE ASHBY, PERSONNALLY

DEFENDANTS

PLAINTIFFS FIRST INTERROGATORIES TO DEFENDANTS

COMES NOW the plaintiffs by counsel per the Rules of the Supreme Court of Virginia for the first interrogatories to be answered under oath with notice that dishonest or intentional untruth answers may subject defendants to perjury contempt of court charges. These interrogatories are to be answered within 21 days of the date of service, to wit:

1) Why did you register the "Amherst Diner" name as a trademark as your property?

2) Have you ever owned the property, 334 Amherst Street?

2015 FEB 13 PM 2:09

ENTERED

- 3) Do you know that the property of 334 Amherst Street operated as the “Amherst Diner” for forty-eight years prior to you operating the property as the “Amherst Diner” for nine years?

- 4) Were you present in the year “1958” to name the property of 334 Amherst Street, “Amherst Diner”?

- 5) Please explain what differentiates you from the previous tenants who operated the property as the Amherst Diner prior to you?

- 6) How do you justify the right to trademark and claim the ownership of the name “Amherst Diner” as your own?

- 7) Do you know who was responsible for vandalism at the Amherst Diner giving names, addresses and phone numbers?

- 8) Who helped you move June 30, 2014 from the Amherst Diner giving names, addresses and phone numbers?
- 9) Specify each item of property you took June 30, 2014 from “the premises” of Amherst Diner?
- 10) Did you read the lease in 2006 before signing it as the tenant?
- 11) How did you “clean” the Amherst Diner when you vacated it?
- 12) Who from the local Health Department did you work with since 2006 giving names, addresses and phone numbers?
- 13) Why did you not maintain the fire suppression system over the stove before notice of eviction?
- 14) Does the landlord not have a right of entry under the lease of 2006 and as amended in 2009?

- 15) What are your reasons to accuse the plaintiffs to conspire to interfere with your business?
- 16) In the Injunction you filed through your attorney of record on May 21, 2014 you claimed that the Plaintiffs interfered with your business in the amount of \$100,000.00 dollars. Are you able to provide dates, time and witnesses to support this allegation? Please attach any documents that support this claim.
- 17) Did you know the Glovers are married and that Rich Bluff, LLC are one in the same as Bessie Glover and Bessie Glover Trust?
- 18) Will you withdraw the trademark you registered in 2010 voluntarily?
- 19) If not, why not?

20) Why did you not give a copy of the 2009 amendment signed by you to Mr. Akers before filing a lawsuit against the plaintiffs?

21) What are any settlement terms that you would agree to negotiate to conclude this matter amicably?

WHEREFORE, the defendants are called upon to answer under oath the above interrogatories within 21 days of the date of service.

I ASKED FOR THIS:



J. BENJAMIN DICK, ESQ.
Counsel for Plaintiffs

DIANE ASHBY,
Defendant

NOTARY PUBLIC

The defendants by name did appear before me and gave oath that their answers above were true and accurate to the best of their knowledge and belief.

MY COMMISSION EXPIRES:

NOTARY PUBLIC

CERTIFICATE

I certify that the above interrogatories were serve on defendants this
17th day of February 2015

J. B. Davis

LAW OFFICES OF J. BENJAMIN DICK....
421 PARK STREET SUITE # 2
CHARLOTTESVILLE, VIRGINIA 22902

434-977-6607

434-977-6619 (Fax)

February 12, 2015

2015 FEB 13 PM 2:09

Hon. Terry H. Whittle, Clerk
The Judicial Center
Winchester Circuit Court
5 North Kent Street
Winchester, VA 22601

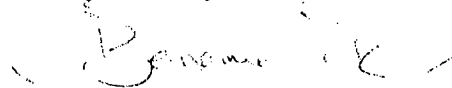
*Re: Bessie M. Glover Trust (A/K/A Rich Bluff, LLC) v. Diane's Diner,
LLC and, Diane Ashby, Personally*

Dear Terry:

Please find enclosed under cover of this letter, a true copy of the Motion for Partial Summary Judgment, Plaintiffs First Request for Admissions and Plaintiffs First Interrogatories to Defendants served upon the Defendants on February 12, 2015.

I remain,

Respectfully,



J. BENJAMIN DICK

VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF WINCHESTER

BESSIE M. GLOVER TRUST, *et al.*,

Plaintiffs,

v.

DIANE'S DINER, LLC, *et al.*,

Defendants.

Case No. CL14-384 - 01

2015 MAR - 6 PM 4:41

PLEA IN BAR, DEMURRER, MOTION FOR JUDGMENT, AND COUNTERCLAIMS

COME NOW Diane's Diner LLC ("Diane's Diner") and Diane Ashby, by counsel, and submit their Plea in Bar, Demurrer, and Motion for Judgment to the Complaint made by Plaintiffs Bessie M. Glover Trust, Bessie M. Glover, and Robert Glover, and submit their Counterclaims, and in support thereof aver as follows:

1. Plaintiffs' lawsuit is based on the same contract and occurrences at issue in a pending action already filed by Defendants in this Court, *Diane's Diner, LLC v. Bessie M. Glover, et al.*, CL 14-268.

2. Rather than filing a counterclaim in the pending matter, Plaintiffs waste the Court's time and force Defendants to expend extra attorney's fees in addressing this additional, poorly-pled lawsuit.

3. Further, Plaintiffs' suit is an effort in forum shopping. Plaintiffs raise claims of fraud, breach of contract, and conversion based on Defendant's trademark registration with the United States Department of Patents and Trademarks. By Plaintiffs' own admission, they have filed a petition to cancel Ms. Ashby's trademark registration for the name "Amherst Diner."

Thus they attempt to have two different tribunals consider the trademark registration at the same time.

4. Plaintiffs' attempt to raise the costs of litigation and circumvent the jurisdiction of the Court by seeking conflicting rulings from different tribunals through inarticulate pleadings at the expense of the judicial system and Defendants is inappropriate and should not be permitted.

5. Further, the Complaint does not comport the Rules of the Supreme Court of Virginia, including Rule 1:4, fails to provide sufficient notice about the specific causes of actions alleged on behalf and against each party to this suit, and fails to state a claim upon which relief can be granted.

PLEA IN BAR TO COUNT I

6. "The defensive plea in bar shortens the litigation by reducing it to a distinct issue of fact which, if proven, creates a bar to the plaintiff's right of recovery." Tomlin v. McKenzie, 251 Va. 478, 480, 468 S.E.2d 882, 884 (1996).

7. Plaintiffs' first count is entitled "Count I – Fraud and Deceit." The only fraudulent statement Plaintiffs point to is Defendants' alleged post on Facebook that "the tenant defendants owned the name [Amherst Diner]." (Compl. at 4.)

8. "The elements of actual fraud are: (1) a false representation, (2) of a material fact, (3) made intentionally and knowingly, (4) with intent to mislead, (5) reliance by the party misled, and (6) resulting damage to the party misled." Winn v. Aleda Const. Co., 227 Va. 304, 308 (1984).

9. Ms Ashby does, in fact, hold a registered Trademark for the name "Amherst Diner." Because Ms. Ashby owns the name "Amherst Diner," the one allegedly false representation Plaintiffs point to is, in fact, true. A true and accurate copy of the certificate of

registration is attached hereto as "Exhibit A" and incorporated herein by reference. This bars Plaintiffs' right to recover on fraud grounds because, as the Virginia Supreme Court explained in Winn, a *false* representation is a necessary element to a fraud claim.

DEMURRER TO COUNT I

10. "To survive a challenge by demurrer, a pleading must be made with sufficient definiteness to enable the court to find the existence of a legal basis for its judgment. In other words, despite the liberality of presentation which the court will indulge, the motion must state a cause of action." Hubbard v. Dresser, Inc., 271 Va. 117, 122-23, 624 S.E.2d 1, 4 (2006) (internal quotation marks and citations omitted).

11. A plaintiff must allege "sufficient facts to constitute a foundation in law for the judgment sought, and not merely conclusions of law." Id. at 122.

12. A fraud claim must include allegations of "(1) a false representation, (2) of a material fact, (3) made intentionally and knowingly, (4) with intent to mislead, (5) reliance by the party misled, and (6) resulting damage to the party misled." Winn at 308.

13. Moreover, a fraud claim requires specificity. "'Where fraud is relied on, the [pleading] must show specifically in what the fraud consists, so that the defendant may have the opportunity of shaping his defence [sic] accordingly, and since [fraud] must be clearly proved it must be distinctly stated.'" Mortarino v. Consultant Eng'g Servs., Inc., 251 Va. 289, 295 (1996) (quoting Ciarochi v. Ciarochi, 194 Va. 313, 315 (1952)).

14. Plaintiffs' fraud claim falls short of these standards in numerous ways.

15. First, Plaintiffs do not allege how the supposed fraud was to their detriment. Plaintiffs allege no damages from fraud other than that they have been "emotionally damaged"

and “greatly embarrassed.” Plaintiffs, however, have not sufficiently pled “emotional damage” to constitute damages recoverable for fraud.

[E]motional distress resulting from a non-tactile tort may be compensated if the plaintiff alleges, and proves by clear and convincing evidence, that: the wrongdoer's conduct is intentional or reckless; the conduct is outrageous and intolerable; the alleged wrongful conduct and emotional distress are causally connected; and, the distress is severe.

Russo v. White, 241 Va. 23, 26, 400 S.E.2d 160, 162 (1991); see also Celeste v. Bayliss, 1986 WL 401809 (Va. Cir. Ct. July 23, 1986) (“[I]n cases based on fraud the general rule is that damages are limited to actual pecuniary loss, though ‘extraordinary features may require a different rule.’) (citing 37 Am. Jur. 2d, Fraud and Deceit).

16. Here, Plaintiffs have not made any allegations whatsoever of “outrageous and intolerable conduct” or that their “distress is severe.” Also, Plaintiffs make only bald assertions that Defendants’ actions were “intentional” and that there is a “causal connection” to Plaintiffs’ purported “emotional damage.”

17. Second, Plaintiffs’ allegation that Ms. Ashby registered the name “Amherst Diner” contradicts Plaintiffs’ allegation that Defendants’ statements were false. If Ms. Ashby holds a trademark to the name, any alleged statements regarding Defendants’ ownership of the name were not false.

18. Third, Plaintiffs state only a legal conclusion that Defendants’ statements on Facebook were “material.” Nowhere do they allege any facts showing *how* those statements were material to the Plaintiffs.

19. Fourth, Plaintiffs fail to allege any intent to mislead on Defendants’ part, other than the bald assertion that “defendants did so with the specific intent to deceive.” Plaintiffs fail to allege whom Defendants intended to deceive or how. This lacks the specificity needed for a fraud claim.

20. Finally, Plaintiffs make only the bald assertion that they relied on Defendants' statement. Plaintiffs allege that they "relied upon the registration as aforesaid, but filed a Petition to Cancel the Defendants' registration as false and fraudulent." Nowhere do Plaintiffs allege how they relied upon the registration.

21. Thus Plaintiffs' claim is far from "distinctly stated," as required by Mortarino, and fails to allege the necessary elements of a fraud claim.

DEMURRER TO COUNT II

22. Plaintiffs' second count is entitled "Wrongful and Intentional Conversion/ Breach of Contract."

23. Plaintiffs address two factual issues in this count: Ms. Ashby's trademark for the name "Amherst Diner" and Defendants' alleged taking of restaurant equipment.

24. Plaintiffs allege both conversion and breach of contract, but fail to indicate which allegations support which legal claim.

25. "An allegation of the tort of conversion asserts a 'wrongful exercise or assumption of authority . . . over another's goods, depriving him of their possession; [and any] act of dominion wrongfully exerted over property in denial of the owner's right, or inconsistent with it.'" Hairston Motor Co. v. Newsome, 253 Va. 129, 135 (1997) (quoting Universal C.I.T. Credit Corp. v. Kaplan, 198 Va. 67, 75 (1956)).

26. "The elements of a breach of contract action are (1) a legally enforceable obligation of a defendant to a plaintiff; (2) the defendant's violation or breach of that obligation; and (3) injury or damage to the plaintiff caused by the breach of obligation." Sunrise Continuing

Care, LLC v. Wright, 277 Va. 148, 154, 671 S.E.2d 132, 135 (2009) (internal quotations omitted).

Conversion/ Breach of Contract Based on the Name "Amherst Diner"

27. No cause of action for conversion can lie for intangible property such as a business name.

28. "[A] cause of action for conversion does not encompass claims for interference with *undocumented* intangible property rights." United Leasing Corp. v. Thrift Ins. Corp., 247 Va. 299, 306, 440 S.E.2d 902, 906 (1994).

29. Thus, Plaintiffs' allegation that Defendants converted the name "Amherst Diner" fails to state a claim on which relief can be granted.

30. Furthermore, as with the fraud claim, Plaintiffs' allegations are inconsistent. Their acknowledgement that Ms. Ashby holds a trademark for the name "Amherst Diner" contradicts any claim of "wrongful exercise or assumption of authority."

31. Plaintiffs' complaint is so muddled that it is impossible to discern whether they allege "breach of contract" based on Ms. Ashby's trademark for the name "Amherst Diner."

32. Plaintiffs certainly fail to make any discernible allegation as to how Ms. Ashby's trademark breaches any alleged contract between the parties. Thus, Plaintiffs fail to plead breach of contract on the basis of the trademark with "sufficient definiteness to enable the court to find the existence of a legal basis for its judgment." Hubbard, 271 Va. at 122.

Conversion/ Breach of Contract Based on Restaurant Equipment

33. As for conversion of restaurant equipment, Plaintiffs allege "On June 30, 2014, defendants took and removed the equipment and chattels o [sic] from the premises owned by the

plaintiffs and part of the 2006 lease Schedule A and converted the same to defendants' sole use and possession." (Compl. at 3-4.)

34. Plaintiffs fail to allege which pieces of restaurant equipment were taken and fail to allege any other details that would allow Defendants to defend against the claim.

35. Furthermore, Plaintiffs do not allege damages other than "replacement costs and attorney fees." No details are given as to the value of the equipment allegedly taken. Rather, Plaintiffs allege that "a detailed list will be presented to the Court and replacement costs." (Compl. at 5).

36. Such statements lack the sufficient definiteness to state a claim of conversion or breach of contract and fail to allege even the damages they claim to have suffered. Rather, they are legal conclusions lacking the "sufficient facts to constitute a foundation in law for the judgment sought," as required by Hubbard. 271 Va. at 122.

SANCTIONS

37. Sanctions are appropriate where an attorney signs a pleading that is not "well grounded in fact" or "warranted by existing law or good faith argument for the extension, modification, or reversal of existing law," "formed after reasonable inquiry." § 8.01-271.1 Code of Virginia of 1950, as amended.

38. Sanctions also are appropriate where a pleading is made for an improper purpose "such as to harass or to cause unnecessary delay or needless increase in the cost of litigation." Id.

39. In this case, Plaintiffs' attorney appears to have made no inquiry whatsoever into the existing law, as shown by Plaintiffs' claim for conversion of a business name.

40. Furthermore, Plaintiffs' Complaint has no apparent purpose other than to harass and needlessly increase the cost of litigation. Rather than file a counterclaim in the existing suit, *Diane's Diner, LLC v. Bessie M. Glover, et al.*, CL 14-268, Plaintiffs filed a separate Complaint, an almost unintelligible hodgepodge of facts and legal claims. Plaintiffs' attorney's sloppy drafting has forced Defendants' attorney to spend considerable time deciphering and responding to the various possible interpretations of Plaintiffs' vague allegations.

41. Therefore, an award of sanctions, in the form of Defendants' attorney's fees and court costs, is warranted in this matter.

WHEREFORE, Defendants Diane's Diner, LLC and Diane Ashby respectfully request that the Court sustain their Plea In Bar and grant their Demurrer, dismiss the Complaint entirely, with prejudice, award Defendants their costs and attorney's fees, and grant such other relief as to this Court appears proper.

COUNTERCLAIMS

COMES NOW. Counter-Plaintiffs Diane's Diner, LLC, t/a Amherst Diner ("Amherst Diner") and Diane Ashby ("Ashby"), by counsel, and for its Counterclaims which are alleged under oath and to which demand is made upon Counter-Defendants to respond under oath, aver as follows:

1. Amherst Diner is a Virginia limited liability company with its principal office in the City of Winchester, Virginia.
2. Diane Ashby ("Ashby") is the sole member of the Amherst Diner.
3. Amherst Diner owned and operated a restaurant located at 334 Amherst Street in the City of Winchester, Virginia.

4. Upon information and belief, Bessie M. Glover ("Glover") is a Virginia resident, currently residing in the City of Winchester, Virginia.

5. Upon information and belief, Robert Glover ("Robert Glover") is a Virginia resident, currently residing in the City of Winchester, Virginia.

6. Upon information and belief, the Counter-Defendant Rich Bluff, LLC ("Rich Bluff") is a Virginia limited liability company with its principal office in the City of Winchester, Virginia.

7. Upon information and belief, the Glovers are the members/managers of Rich Bluff.

8. Upon information and belief, during all relevant times, the Glovers have treated Rich Bluff as their *alter ego*.

9. Upon information and belief, Rich Bluff is the record owner of title of the property known as 334-338 Amherst Street, Tax Map Id No. 172-01-14 in the City of Winchester, Virginia ("Property"), where the Amherst Diner operates.

10. Upon information and belief, the Bessie M. Glover Trust ("Glover Trust") is the previous record owner of title of the Property.

11. Upon information and belief, the Glovers serve as Trustee(s) of the Glover Trust.

12. In November 2006, the Amherst Diner began operating its restaurant at the Property.

13. The Amherst Diner has grown as a popular local establishment, serving tens of thousands of customers each year.

14. Ashby and the Amherst Diner had a lease agreement with Counter-Defendants to operate the restaurant at the Property starting in November 2006.

15. Over the years, the parties entered into additional lease agreements through the course of business.

16. The Amherst Diner paid its monthly rent on time and has spent a considerable amount of money on improvements to the Property.

17. The Counter-Defendants agreed to make repairs and replacements to equipment, but refused to make these repairs and replacements.

18. Consequently, the Amherst Diner expended a significant amount of money repairing and replacing equipment that the Counter-Defendants we required to repair or replace.

19. In addition, the Counter-Defendants coerced the Amherst Diner into performing additional work that was not agreed to by the parties by threatening to evict the Amherst Diner from the Property.

20. The Counter-Defendants agreed not to interfere with the Amherst Diner's business with its customers or employees during its tenancy at the Property.

21. However, on multiple occasions, Counter-Defendants entered the restaurant and caused disruptions by, without limitation, making loud complaints about the food, sanitation, and temperature of the restaurant so that customers could hear.

22. Likewise, on multiple occasions, Counter-Defendants entered the restaurant and made false and injurious statements about the condition of the Amherst Diner's current and future operations within the hearing of customers and employees.

23. Additionally, Counter-Defendants have entered the restaurant and harassed employees of Amherst Diner, and otherwise interfered with the preparation of food and other operations of the restaurant through different actions, including, in at least one instance, physically pushing an employee of the Amherst Diner.

24. On multiple occasions, Glover has interfered with the business of the Amherst Diner by, including, but not limited to, forcing the Amherst Diner to remove decorations, and by attempting to instruct the Amherst Diner and employees how to prepare food in a manner contrary to the instructions of the Amherst Diner, and attempting to force the Amherst Diner to prohibit a certain regular customer from dining at the Amherst Diner due to a political disagreement the Glovers had with this individual.

25. On multiple occasions, Counter-Defendants have also threatened to shut down the business of the Amherst Diner and, upon information and belief, have told other individuals that they intend to “bury” the Amherst Diner and/or Ashby.

26. In January 2014, a sewage main line at the Property collapsed.

27. Fixing the sewage main line was the responsibility of the Counter-Defendants.

28. Despite repeated requests to fix the sewage main lines in such a manner as not to disrupt the business of the Amherst Diner, Counter-Defendants refused to act expeditiously, forcing the Amherst Diner to close for five (5) days and resulting in a significant loss of business for the Amherst Diner.

29. In addition, the Counter-Defendants agreed to pay for repairs to the fire suppressant system and have failed to do so.

30. On or about April 30, 2014, Glover, as Trustee of the Glover Trust and Manager of Rich Bluff, sent a letter to the Amherst Diner instructing the business to vacate the Property within thirty (30) days, or by May 31, 2014.

31. In addition, the Counter-Defendants represented to Ashby that they were willing to delay taking any action to attempt to evict the Amherst Diner from the Property in accordance with their previous agreements to provide a reasonable period of time to wind up the business at

the Property before relocating.

32. Despite the Amherst's Diner's reliance upon this, the Counter-Defendants proceeded to unreasonably attempt to evict the Amherst Diner immediately contrary to their agreement.

33. The parties had an agreement to allow the Amherst Diner to continue in operations at the Property and in reliance upon this, the Amherst Diner spent a significant amount of money repairing pipes and re-upholstering booths at the Property.

34. The Counter-Defendants unreasonably evicted the Amherst Diner on very short notice, causing the Amherst Diner to incur significant expenses and loss of revenue moving to a new location.

35. Upon information and belief, the Counter-Defendants, personally and through agents, attempted to intimidate Ashby, customers, and employees of the Amherst Diner by taking pictures of the vehicles and license plates of those at the Amherst Diner, and by threatening Ashby.

36. Upon information and belief, the Counter-Defendants, personally and through agents acting on their behalf, continued to intimidate and harass Ashby and employees of the Amherst Diner after they moved the restaurant from the Property.

37. Upon information and belief, the Counter-Defendants, personally and through agents acting on their behalf, spread false and malicious information to slander the reputation of Ashby and the Amherst Diner in the community through, including, but not limited to, private and public conversations, conversations and in online forums, and by hiring contractors to perform work on the Property and sending bills to Counter-Plaintiffs to harass and injure their reputation in the community.

MOTION FOR INJUNCTIVE RELIEF

38. The allegations set forth in Paragraphs 1 through 37 above are incorporated herein by reference as if set forth in their entirety.

39. There is no adequate remedy at law; in order to stop Counter-Defendants from interfering with the Amherst Diner's business they must be enjoined from doing so.

40. The balance of equities favor the Amherst Diner because the risk of loss to the Amherst Diner outweighs any potential loss to the Counter-Defendants.

41. A permanent injunction serves the public interest of preserving the rights of Amherst Diner to carry on the business without interference.

WHEREFORE, Counter-Plaintiffs Diane's Diner, LLC, t/a Amherst Diner and Diane Ashby respectfully move this Honorable Court to grant a permanent injunction enjoining Counter-Defendants Bessie M. Glover, Robert Glover, Rich Bluff, LLC, and Bessie M. Glover Trust from any interference with the business, and grant Counter-Plaintiffs Diane's Diner, LLC, t/a Amherst Diner and Diane Ashby such further relief as this Honorable Court may deem appropriate.

COUNT I - BREACH OF CONTRACT

42. The allegations set forth in Paragraphs 1 through 41 above are incorporated herein by reference as if set forth in their entirety.

43. The Amherst Diner and Counter-Defendants had a lease agreement whereby, *inter alia*, the Amherst Diner paid Three-Thousand, Five Hundred and 00/100 Dollars (\$3,500.00) per month.

44. In accordance with the lease agreement, the Amherst Diner paid each month's rent on time.

45. Pursuant to the terms of the lease agreement, Counter-Defendants agreed not to interfere with the business of the Amherst Diner.

46. The Counter-Defendants breached this agreement through their direct actions and those of their agents to interfere, harass and intimidate Ashby, the Amherst Diner, and employees, as set forth in greater detail above and resulting in damages to the Amherst Diner.

47. Additionally, the Counter-Defendants breached the lease agreement by refusing to perform the repairs and replacements required on the Property set forth in greater detail above and resulting in damages to the Amherst Diner.

48. On multiple occasions, the Counter-Defendants promised to allow the Amherst Diner to continue to operate the restaurant at the Property in the future and would provide a reasonable period of time for the Amherst Diner to move to a new location in the event of termination.

49. In breach of this promise, the Counter-Defendants unreasonably evicted the Amherst Diner with short notice, resulting in damages to the Amherst Diner.

50. As a result of Counter-Defendants' breaches, the Amherst Diner has suffered considerable damages and is entitled to relief.

WHEREFORE, Counter-Plaintiff Diane's Diner, LLC, t/a Amherst Diner, respectfully moves this Honorable Court to grant a permanent injunction enjoining Counter-Defendants Bessie M. Glover, Robert Glover, Rich Bluff, LLC, and Bessie M. Glover Trust from any interference with the business, including any attempts to interfere with the occupancy at the Property, and grant judgment in favor of Counter-Plaintiff against Counter-Defendants in the

amount of One Hundred Thousand and 00/100 Dollars (\$100,000.00), or any amount proven at trial, and grant Diane's Diner, LLC. t/a Amherst Diner such further relief as this Honorable Court may deem appropriate.

COUNT II – TORTIOUS INTERFERENCE WITH BUSINESS

51. The allegations set forth in Paragraphs 1 through 50 above are incorporated herein by reference as if set forth in their entirety.

52. The Amherst Diner has an ongoing business relationship with the hundreds of regular customers who regularly patronize the Amherst Diner and provide a significant economic benefit to the restaurant.

53. At all pertinent times, the Counter-Defendants have had knowledge of the many patrons and loyal customer base of the Amherst Diner as well as the mutual expectations that the Amherst Diner would continue to operate at the Property and resultant economic benefit.

54. There is a reasonable certainty that the Amherst Diner would continue in this profitable relationship with its customers absent Counter-Defendants' attempts to interfere.

55. As set forth above in greater detail, Counter-Defendants have used and continue to use improper methods to interfere with the business of the Amherst Diner.

56. As a proximate and direct result of Counter-Defendants' interference, the Amherst Diner has suffered damages in the form of lost business and is at risk of losing additional business if the Counter-Defendants are allowed to continue interfering with the business of the Amherst Diner.

WHEREFORE, Counter-Plaintiff Diane's Diner, LLC, t/a Amherst Diner, respectfully moves this Honorable Court to grant a permanent injunction enjoining Counter-Defendants

Bessie M. Glover, Robert Glover, Rich Bluff, LLC, and Bessie M. Glover Trust from any interference with the business, including any attempts to interfere with the occupancy at the Property, award Counter-Plaintiff compensatory damages in the amount of One Hundred Thousand and 00/100 Dollars (\$100,000.00), or any other amount proven at trial, and grant Diane's Diner, LLC, t/a Amherst Diner such further relief as this Honorable Court may deem appropriate.

COUNT III - COMMON LAW CONSPIRACY

57. The allegations set forth in Paragraphs 1 through 56 above are incorporated herein by reference as if set forth in their entirety.

58. The Counter-Defendants have worked in combination for the purpose of willfully and maliciously injuring the Amherst Diner's business.

59. The Counter-Defendants' conspiracy has caused significant damages to the Amherst Diner's business and threatens to cause irreparable harm if allowed to continue.

60. The total amount of damages, including court costs and attorneys' fees will not be known until the date of trial in this matter, but will be submitted to the Court in due course.

WHEREFORE, Counter-Plaintiffs Diane's Diner, LLC, t/a Amherst Diner, and Diane Ashby respectfully move this Honorable Court to grant a permanent injunction enjoining Counter-Defendants Bessie M. Glover, Robert Glover, Rich Bluff, LLC, and Bessie M. Glover Trust from any interference with the business, including any attempts to interfere with the occupancy at the Property, award Counter-Plaintiffs compensatory damages in the amount of One Hundred Thousand and 00/100 Dollars (\$100,000.00), or any other amount proven at trial,

punitive damages in the same amount and treble damages, and grant Diane's Diner, LLC, t/a Amherst Diner and Diane Ashby such further relief as this Honorable Court may deem appropriate.

COUNT IV – STATUTORY CONSPIRACY

61. The allegations set forth in Paragraphs 1 through 60 above are incorporated herein by reference as if set forth in their entirety.

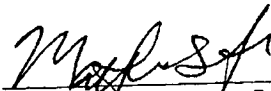
62. The Counter-Defendants have worked in combination for the purpose of willfully and maliciously injuring the Amherst Diner's business.

63. The Counter-Defendants' conspiracy has caused significant damages to the Amherst Diner's business and threatens to cause irreparable harm if allowed to continue.

64. The total amount of damages, including court costs and attorneys' fees will not be known until the date of trial in this matter, but will be submitted to the Court in due course.

WHEREFORE, Counter-Plaintiffs Diane's Diner, LLC, t/a Amherst Diner, and Diane Ashby respectfully move this Honorable Court to grant a permanent injunction enjoining Counter-Defendants Bessie M. Glover, Robert Glover, Rich Bluff, LLC, and Bessie M. Glover Trust from any interference with the business, including any attempts to interfere with the occupancy at the Property, award Counter-Plaintiffs compensatory damages in the amount of One Hundred Thousand and 00/100 Dollars (\$100,000.00), or any other amount proven at trial, punitive damages in the same amount and treble damages, and grant Diane's Diner, LLC, t/a Amherst Diner and Diane Ashby such further relief as this Honorable Court may deem appropriate.

Respectfully submitted,
DIANE'S DINER, LLC,
and DIANE ASHBY,
By Counsel.



Matthew S. Akers, Esquire
Virginia Bar No. 74615
McCARTHY & AKERS, PLC
302 W. Boscawen Street
Winchester, Virginia 22601
Phone: (540) 722-2181
Fax: (540) 722-2381

Counsel for Defendants Diane's Diner, LLC and Diane Ashby

CERTIFICATE OF SERVICE

I do hereby certify that on this 6th day of March, 2015, I caused a copy of the foregoing to be served by first-class, postage-prepaid mail upon:

J. Benjamin Dick
Law Offices of J. Benjamin Dick
421 Park St., Suite 2
Charlottesville, VA 22902

Counsel for Plaintiffs



Matthew S. Akers

VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF WINCHESTER

BESSIE M. GLOVER TRUST,
BESSIE M. GLOVER,
ROBERT GLOVER
(A/K/A RICH BLUFF, LLC),

Plaintiffs,

v.

DIANE'S DINER, LLC,
AND
DIANE ASHBY, PERSONALLY.

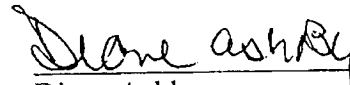
Defendants.

Case No. CL14-384

AFFIDAVIT


STATE OF VIRGINIA;
CITY OF WINCHESTER; to-wit:

Before me, the undersigned Notary Public in and for the City and State aforesaid, personally appeared Diane Ashby, Owner of Diane's Diner, LLC, who, after being duly sworn, deposes and says that to the best of her knowledge and belief, all allegations alleged herein in this matter are true.



Diane Ashby

Taken, sworn and subscribed before me in my City and State aforesaid this 4th day of March, 2015.



Notary Public

My Commission Expires: 8/31/15

My Registration No.: 7095009

MICHELLE FARRAR
NOTARY PUBLIC
COMMONWEALTH OF VIRGINIA
REGISTRATION NO. 7095009
S. COMM. MICHELLE O.

United States of America

United States Patent and Trademark Office

Amherst Diner

Reg. No. 3,805,099

Registered June 15, 2010

Int. Cl.: 43

SERVICE MARK

SUPPLEMENTAL REGISTER

ASHBY, DIANE (UNITED STATES INDIVIDUAL)
212 GREY WOLF TRAIL
WINCHESTER, VA 22602

FOR: RESTAURANT AND DINER SERVICES, IN CLASS 43 (U.S. CLS. 100 AND 101).

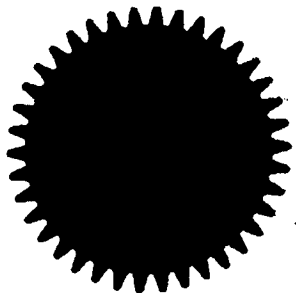
FIRST USE 11-1-2006; IN COMMERCE 11-1-2006.

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "DINER", APART FROM THE MARK AS SHOWN.

SER. NO. 77-920,570, FILED P.R. 1-26-2010; AM. S.R. 4-29-2010.

BARBARA GAYNOR, EXAMINING ATTORNEY



David J. Kappas

Director of the United States Patent and Trademark Office



COVER SHEET FOR FILING CIVIL ACTIONS
COMMONWEALTH OF VIRGINIA

Case No. CL14000384-01
(CLERK'S OFFICE USE ONLY)

City of Winchester

Circuit Court

Bessie M. Glover Trust, et al.
PLAINTIFF(S)

v./In re:

Diane's Diner, LLC, et al.
DEFENDANT(S)

I, the undersigned plaintiff defendant attorney for plaintiff defendant hereby notify the Clerk of Court that I am filing the following civil action. (Please indicate by checking box that most closely identifies the claim being asserted or relief sought.)

GENERAL CIVIL

Subsequent Actions

- Claim Impleading Third Party Defendant
- Monetary Damages
- No Monetary Damages
- Counterclaim
- Monetary Damages
- No Monetary Damages
- Cross Claim
- Interpleader
- Reinstatement (other than divorce or driving privileges)
- Removal of Case to Federal Court

Business & Contract

- Attachment
- Confessed Judgment
- Contract Action
- Contract Specific Performance
- Detinue
- Garnishment

Property

- Annexation
- Condemnation
- Ejectment
- Encumber/Sell Real Estate
- Enforce Vendor's Lien
- Escheatment
- Establish Boundaries
- Landlord/Tenant
- Unlawful Detainer
- Mechanics Lien
- Partition
- Quiet Title
- Termination of Mineral Rights

Tort

- Asbestos Litigation
- Compromise Settlement
- Intentional Tort
- Medical Malpractice
- Motor Vehicle Tort
- Product Liability
- Wrongful Death
- Other General Tort Liability

ADMINISTRATIVE LAW

- Appeal/Judicial Review of Decision of (select one)
 - ABC Board
 - Board of Zoning
 - Compensation Board
 - DMV License Suspension
 - Employee Grievance Decision
 - Employment Commission
 - Local Government
 - Marine Resources Commission
 - School Board
 - Voter Registration
 - Other Administrative Appeal

DOMESTIC/FAMILY

- Adoption
- Adoption - Foreign
- Adult Protection
- Annulment
- Annulment - Counterclaim/Responsive Pleading
- Child Abuse and Neglect - Unfounded Complaint
- Civil Contempt
- Divorce (select one)
 - Complaint - Contested*
 - Complaint - Uncontested*
 - Counterclaim/Responsive Pleading
 - Reinstatement - Custody/Visitation/Support/Equitable Distribution
- Separate Maintenance
- Separate Maintenance Counterclaim

WRITS

- Certiorari
- Habeas Corpus
- Mandamus
- Prohibition
- Quo Warranto

PROBATE/WILLS AND TRUSTS

- Accounting
- Aid and Guidance
- Appointment (select one)
 - Guardian/Conservator
 - Standby Guardian/Conservator
 - Custodian/Successor Custodian (UTMA)
- Trust (select one)
 - Impress/Declare
 - Reformation
- Will (select one)
 - Construe
 - Contested

MISCELLANEOUS

- Appointment (select one)
 - Church Trustee
 - Conservator of Peace
 - Marriage Celebrant
- Bond Forfeiture Appeal
- Declaratory Judgment
- Declare Death
- Driving Privileges (select one)
 - Reinstatement pursuant to § 46.2-427
 - Restoration - Habitual Offender or 3rd Offense
- Expungement
- Firearms Rights - Restoration
- Forfeiture of U.S. Currency
- Freedom of Information
- Injunction
- Interdiction
- Interrogatory
- Judgment Lien-Bill to Enforce
- Law Enforcement/Public Official Petition
- Name Change
- Referendum Elections
- Sever Order
- Taxes (select one)
 - Correct Erroneous State/Local
 - Delinquent
- Vehicle Confiscation
- Voting Rights - Restoration
- Other (please specify)

2015 MAR - 9 AM 10:10
 COURT CLERK'S OFFICE

Damages in the amount of \$ 100,000.00 are claimed.
3/19/15 DATE

Matthew S. Akers
 PLAINTIFF DEFENDANT ATTORNEY FOR PLAINTIFF DEFENDANT

Matthew S. Akers, Esquire
 PRINT NAME

302 W. Boscawen St.
 ADDRESS/TELEPHONE NUMBER OF SIGNATOR
 Winchester, VA 22601 / 540-722-2181

makers@mccarthyakers.com
 EMAIL ADDRESS OF SIGNATOR (OPTIONAL)

****Contested** divorce means any of the following matters are in dispute: grounds of divorce, spousal support and maintenance, child custody and/or visitation, child support, property distribution or debt allocation. An "Uncontested" divorce is filed on no fault grounds and none of the above issues are in dispute.**

VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF WINCHESTER

BESSIE M. GLOVER TRUST, *et al.*

Plaintiffs,

v.

DIANE'S DINER, LLC, *et al.*,

Defendants.

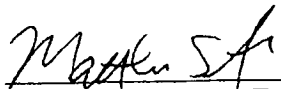
Case No. CL14-384 -01

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 6th day of March, 2015, a true copy of the foregoing Plaintiff Diane's Diner, LLC's First Set of Requests for Production to Defendant Bessie M. Glover was delivered *via* first-class mail, postage prepaid to the offices of:

J. Benjamin Dick
Law Offices of J. Benjamin Dick
421 Park St., Suite 2
Charlottesville, VA 22902

Counsel for Plaintiffs


Matthew S. Akers, Esquire
Virginia Bar No. 74615
McCARTHY & AKERS, PLC
302 W. Boscawen Street
Winchester, Virginia 22601
Phone: (540) 722-2181
Fax: (540) 722-2381

Counsel for Defendants Diane's Diner, LLC and Diane Ashby

2015 MAR -6 PM 4:41
CIRCUIT COURT
CITY OF WINCHESTER

VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF WINCHESTER

BESSIE M. GLOVER TRUST, *et al.*

Plaintiffs,

v.

DIANE'S DINER, LLC, *et al.*,

Defendants.

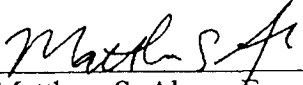
Case No. CL14-384-01

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 6th day of March, 2015, a true copy of the foregoing Plaintiff Diane's Diner, LLC's First Set of Interrogatories to Defendant Bessie M. Glover was delivered *via* first-class mail, postage prepaid to the offices of:

J. Benjamin Dick
Law Offices of J. Benjamin Dick
421 Park St., Suite 2
Charlottesville, VA 22902

Counsel for Plaintiffs


Matthew S. Akers, Esquire
Virginia Bar No. 74615
McCARTHY & AKERS, PLC
302 W. Boscawen Street
Winchester, Virginia 22601
Phone: (540) 722-2181
Fax: (540) 722-2381

Counsel for Defendants Diane's Diner, LLC and Diane Ashby

2015 MAR - 6 PM 4: 41
CIRCUIT COURT
CITY OF WINCHESTER

VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF WINCHESTER

BESSIE M. GLOVER TRUST, *et al.*

Plaintiffs,

v.

DIANE'S DINER, LLC, *et al.*,

Defendants.


Case No. CL14-384 -01

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 6th day of March, 2015, a true copy of the foregoing Defendants' Responses to Plaintiffs' First Interrogatories was delivered *via* first-class mail, postage prepaid to the offices of:

J. Benjamin Dick
Law Offices of J. Benjamin Dick
421 Park St., Suite 2
Charlottesville, VA 22902

Counsel for Plaintiffs


Matthew S. Akers, Esquire
Virginia Bar No. 74615
McCARTHY & AKERS, PLC
302 W. Boscawen Street
Winchester, Virginia 22601
Phone: (540) 722-2181
Fax: (540) 722-2381

Counsel for Defendants Diane's Diner, LLC and Diane Ashby

2015 MAR - 6 PM 4: 41
CIRCUIT COURT
CITY OF WINCHESTER
CLERK

VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF WINCHESTER

BESSIE M. GLOVER TRUST, *et al.*

Plaintiffs,

v.

DIANE'S DINER, LLC, *et al.*,

Defendants.

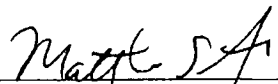
Case No. CL14-384 - 01

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 6th day of March, 2015, a true copy of the foregoing Defendants' Responses to Plaintiffs' First Request for Admissions was delivered *via* first-class mail, postage prepaid to the offices of:

J. Benjamin Dick
Law Offices of J. Benjamin Dick
421 Park St., Suite 2
Charlottesville, VA 22902

Counsel for Plaintiffs


Matthew S. Akers, Esquire
Virginia Bar No. 74615
McCARTHY & AKERS, PLC
302 W. Boscawen Street
Winchester, Virginia 22601
Phone: (540) 722-2181
Fax: (540) 722-2381

Counsel for Defendants Diane's Diner, LLC and Diane Ashby

FILED
CIRCUIT COURT
TERRY
CLERK
2015 MAR - 6 PM 4:41

VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF WINCHESTER

BESSIE M. GLOVER TRUST, *et al.*,

Plaintiffs,

v.

DIANE'S DINER, LLC, *et al.*,

Defendants.

Case No. CL14-384

NOTICE OF DEPOSITION OF ROBERT GLOVER

TO: Robert Glover, and J. Benjamin Dick, Esquire, his attorney.

Please take notice that the undersigned will take the deposition of Plaintiff Robert Glover, of 316 Ridge Avenue, Winchester, VA 22601, on April 9, 2015, beginning at 9:00 a.m. on said date at the law offices of the undersigned counsel, 302 W. Boscawen St., Winchester, Virginia 22601, pursuant to the provisions of Rule 4:5 of the Rules of the Virginia Supreme Court, and you are further notified to be present at that place and time.

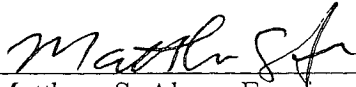
If for any cause the taking of the deposition be not commenced, or if commenced be not concluded on that day, the taking thereof will be adjourned from time to time at the place until the same shall be concluded.

Dated this 17th day of March, 2015.

Respectfully submitted,
DIANE'S DINER, LLC,
and DIANE ASHBY,
By Counsel.

2015 MAR 17 PM 4:33
CLERK OF COURT
FERRYVILLE, VIRGINIA

ENTERED
AMR



Matthew S. Akers, Esquire
Virginia Bar No. 74615
McCARTHY & AKERS, PLC
302 W. Boscawen Street
Winchester, Virginia 22601
Phone: (540) 722-2181
Fax: (540) 722-2381

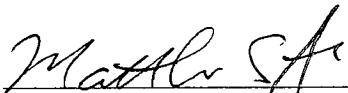
Counsel for Defendants Diane's Diner, LLC and Diane Ashby

CERTIFICATE OF SERVICE

I do hereby certify that on this 17th day of March, 2015, I caused a copy of the foregoing to be served by first-class, postage-prepaid mail upon:

J. Benjamin Dick, Esquire
Law Offices of J. Benjamin Dick
421 Park St., Suite 2
Charlottesville, VA 22902

Counsel for the Plaintiffs



Matthew S. Akers, Esquire

VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF WINCHESTER

BESSIE M. GLOVER TRUST, *et al.*,

Plaintiffs,

v.

Case No. CL14-384

DIANE'S DINER, LLC, *et al.*,

Defendants.

NOTICE OF DEPOSITION OF BESSIE M. GLOVER

TO: Bessie M. Glover, and J. Benjamin Dick, Esquire, her attorney.

Please take notice that the undersigned will take the deposition of Plaintiff Bessie M. Glover, of 316 Ridge Avenue, Winchester, VA 22601, on April 9, 2015, beginning at 9:00 a.m. on said date at the law offices of the undersigned counsel, 302 W. Boscawen St., Winchester, Virginia 22601, pursuant to the provisions of Rule 4:5 of the Rules of the Virginia Supreme Court, and you are further notified to be present at that place and time.


If for any cause the taking of the deposition be not commenced, or if commenced be not concluded on that day, the taking thereof will be adjourned from time to time at the place until the same shall be concluded.

Dated this 17th day of March, 2015.

Respectfully submitted,
DIANE'S DINER, LLC,
and DIANE ASHBY,
By Counsel.

2015 MAR 17 PM 4:34
CIRCUIT COURT
CLERK





Matthew S. Akers, Esquire
Virginia Bar No. 74615
MCCARTHY & AKERS, PLC
302 W. Boscawen Street
Winchester, Virginia 22601
Phone: (540) 722-2181
Fax: (540) 722-2381


Counsel for Defendants Diane's Diner, LLC and Diane Ashby

CERTIFICATE OF SERVICE

I do hereby certify that on this 17th day of March, 2015, I caused a copy of the foregoing to be served by first-class, postage-prepaid mail upon:

J. Benjamin Dick, Esquire
Law Offices of J. Benjamin Dick
421 Park St., Suite 2
Charlottesville, VA 22902

Counsel for the Plaintiffs



Matthew S. Akers, Esquire

**VIRGINIA:
IN THE CIRCUIT COURT FOR THE CITY OF WINCHESTER**

**BESSIE M. GLOVER TRUST
BESSIE M. GLOVER
ROBERT GLOVER
(A/K/A RICH BLUFF, LLC)**

PLAINTIFFS,

V.

**CASE # CL 14-384
CASE # CL 14-268**

DIANE'S DINER, LLC

And,

DIANE ASHBY, PERSONNALLY

DEFENDANTS.

**MOTION TO DISMISS THE CASES FILED BY DIANE ASHBY &
DIANE'S DINER, LLC, (CL14-384 AND CL14-268)**

COMES NOW the Plaintiffs, (the Glovers here and after) by counsel make a general denial of all representations made by the defendants (Diane Ashby & Diane's Diner, LLC) to this honorable court in her verified counter claim and in support of the Plaintiffs' (The Glovers) Motion to Dismiss they do say as follows:

- 1) The legal structure of the relationship between (Landlord) and (Tenant) is embodied by the certain commercial lease dated November 1, 2006 and as amended on September 9, 2009, signed and agreed to by both parties. Here attached as a true copy of the commercial lease [as Attachment A] and the amended commercial lease, [as Attachment B]. The Motion to Dismiss includes but is not limited to the Defendants' (Diane Ashby, & Diane's Diner, LLC)**

claim of common law and statutory conspiracy against the Glovers demanding injunctive relief.

- 2) All facts and circumstances before this honorable court arose out of the commercial lease. The said commercial lease was prepared by venerated Tom Dickenson of the local bar and submitted to the Plaintiffs (The Glovers) as the commercial lease of 334 Amherst Street, Winchester, VA 22601, premises "Amherst Diner." The said commercial lease noted above governs the above said cases before the court as a written instrument barring all parole evidence.**

- 3) Nowhere in the four corners of this provision stated above do the Plaintiffs (The Glovers) give the Defendants (Diane Ashby & Diane's Diner, LLC) ownership of the name "Amherst Diner."**

- 4) The lease was signed and agreed to by the Defendant's (Diane Ashby & Diane's Diner, LLC) and the Plaintiffs (The Glovers) on November 1, 2006 and as amended on September 9, 2009. The lease states as follows:**
 - a) Paragraph I, Section f., PREMISES: "Amherst Diner, consisting of a brick building, together with the personal property located thereon including the equipment shown on the attached Schedule A, said property being located at 334 Amherst Street, Winchester, Virginia, fronting thereon a distance of 46 feet, more or less, and extending back between parallel lines a distance of 108 feet, including the marked parking spaces along the north boundary and which consists of the building where the Amherst Diner currently operates and the parking spaces relating thereto. This is the eastern portion of a larger tract of land conveyed to the Lessor by Robert E. Glover."**

- 5) The Plaintiffs attach a letter [as Attachment C] from Mrs. Bessie Glover of "Rich Bluff LLC," to Mr. McCarthy of "McCarthy & Akers" with reference to Mr. & Mrs. Glover contesting the granting of the trademark "Amherst Diner" to Diane Ashby dated July 23, 2014. Reference the attached pleading to the USPTO filed by Mr. Glover to the USPTO., which is adopted and incorporated here as**

part of the pleadings of the Plaintiffs' (The Glovers) complaint as Exhibit D.

- 6) The Defendants (Diane Ashby & Diane's Diner, LLC) committed not only a fraud on the court but also a fraud on the United States Patent and Trademark Office by claiming to be the owner of the Trademark "Amherst Diner" on the Application filed on January 26, 2010 by Diane Ashby at which time the defendant violated the terms of the lease dated November 1, 2006 and amended on September 9, 2009. Reference the attached application to the United States Patent and Trademark office [as Attachment D] and the following paragraph of the commercial lease:**

a) Paragraph 14, Name. "Tenant shall not change the name of the diner and restaurant without prior written approval of the Landlord. Also, other than what currently exists, Tenant will not allow to be placed or maintain any sign, awning or canopy in, upon the Premises, nor shall Tenant place on the display windows any sign, lettering, coloring or advertising matter of any nature without the prior written approval of the Landlord."

- 7) The Defendants (Diane Ashby & Diane's Diner, LLC) claim in the letter she wrote to the United States Patent and Trademark Office [as Attachment E] states, that she wanted to protect the name "Amherst Diner" located at 334 Amherst Street in Winchester, VA for which she had worked so hard to grow, is strictly false. Attached please find the following [as Attachment F]:**

- a) An article from the Winchester Star, Posted August 2, 2014, written by Sally Voth. In the article Ms. Voth states the following, "Bessie Glover is the registered agent of Rich Bluff LLC, which owns the building at 334 Amherst St. It has been known as the Amherst Diner for decades". The defendant began renting and operating the above referenced premises in 2006. To date, it has not even been a decade. The intentional fraud and deceit concocted by Ms. Diane Ashby claiming falsely that she was the founder of the "Amherst Diner" speaks for itself.**

- 8) The Defendants (Diane Ashby & Diane's Diner, LLC) state in the attached letter [Attachment E] found in paragraph 7 that the former Mayor of Winchester, VA and current business owner, Mr. Larry Omps of Omps Funeral Home and Cremation Center endorsed the defendant as the "Amherst Diner." Attached is a letter of retraction from Mr. Larry Omps to The United States Patent and Trademark Office, dated October 16, 2014 [as Attachment G] which states that Mr. Larry Omps only meant to congratulate Ms. Diane Ashby on opening a new business in the city of Winchester, not to recognize her as the "Amherst Diner." Mr. Omps will happily testify to authenticate his letter to the United States Patent and Trademark Office.**
- 9) The Defendants (Diane Ashby & Diane's Diner, LLC) claim that the Plaintiffs' (The Glovers) interference with the success of the business caused the Defendants to lose a significant amount of money while operating the Amherst Diner. These claims are strictly false. The Plaintiffs deny any interference to the Defendants claim. The Defendant knew before the term of the lease began that the Glovers had owned the property for decades and were frequent customers of the Amherst Diner. The Plaintiffs are bound by the lease to a "right of entry." The following paragraph from the terms of the lease signed and agreed to by both parties in 2006 and as amended in 2009 speaks for itself:**
- a) Paragraph 25, Access To Premises. "Landlord and its representatives shall have the right to enter upon the Premises during all regular business hours (and in emergencies at all times) for the purpose of inspecting or exhibiting the same to purchasers, mortgagees and tenants, prospective or present, or for the purpose of making such repairs, additions, alterations or improvements thereto or thereon or to the building of which it forms a part as Landlord may deem desirable or necessary, and for any other lawful purpose. During the last six (6) months of the Lease Term, Landlord shall**

have the right to maintain a “for rent” sign on the Premises.”

10) Plaintiffs are entitled to attorney’s fees by the defendant, reference the following paragraph of the lease signed in 2006 and as amended in 2009 to support this claim:

a) Paragraph 23. Default/Remedies/Bankruptcy. b (ix) “In the event that Landlord must reply to letters or other communication from Tenant or Tenant’s attorney, or if Landlord brings suit for the possession of the Premises, for the recovery of any sum due hereunder, or for any other relief against Landlord, declaratory or otherwise, or if Tenant brings any suit for any relief against Landlord, declaratory or otherwise, arising out of this Lease, then in each instance Tenant agrees to pay Landlord all costs, expenses and reasonable attorneys’ fees that Landlord may have incurred in connection therewith.”


11) The Defendants (Diane Ashby & Diane’s Diner, LLC) is practicing fraud on this court by gross misrepresentation and causing obstruction of the administration of justice by falsely representing that she had an oral agreement with the Plaintiffs (The Glovers.)

12) No oral agreement was ever made between the Plaintiffs (The Glovers) and the Defendants (Diane Ashby & Diane’s Diner, LLC) The only agreement of record is the lease signed and agreed to by both parties on November 1, 2006 and as amended on September 9, 2009. The Defendants (Diane Ashby & Diane’s Diner, LLC) has continued to this very moment to falsely inform this honorable court that she had an oral agreement, a falsehood and an exaggerated story.

CERTIFICATE OF SERVICE

I do hereby certify that on this 19th day of March, 2015, I sent a true copy of the foregoing by first-class, postage prepaid mail upon:

Matthew S. Akers, Esquire
McCarthy & Akers, PLC
302 W. Boscawen Street
Winchester, Virginia 22601
Counsel for the Defendants and Cross Claimants



J. Benjamin Dick

VIRGINIA:
IN THE CIRCUIT COURT FOR THE CITY OF WINCHESTER

BESSIE M. GLOVER TRUST
BESSIE M. GLOVER
ROBERT GLOVER
(A/K/A RICH BLUFF, LLC)

PLAINTIFFS,

V.

CASE # CL 14-384

DIANE'S DINER, LLC

And,

DIANE ASHBY, PERSONNALY

DEFENDANTS.

**PLAINTIFFS' ANSWERS TO DEFENDANTS' FIRST SET OF
INTERROGATORIES**

COMES NOW the Plaintiffs, (the Glovers here and after) by counsel in answer to the cross claimant and Defendant's (Diane's Diner, LLC, *et al.*) First Set of Interrogatories do say as follows:

- 1) In answer to paragraphs 1-19, The Plaintiffs (The Glovers) have filed a motion for a protection order to all discovery by reason to a fraud on the court and upon themselves, Bessie M. Glover, Robert Glover, Rich Bluff, LLC, and Bessie M. Glover Trust and a motion to dismiss the case's (CL 14-384 & CL 14-268) for the same reasons.

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APP. 21

WHEREFORE, the Plaintiffs (The Glovers) have dually responded to the Defendants' (Diane Ashby & Diane's Diner, LLC) request for answers to The First Set of Interrogatories.

BY: JBD
J. BENJAMIN DICK
Counsel for the Plaintiffs
Law Offices of J. Benjamin Dick
421 Park Street, Suite 2
Charlottesville, Va 22902
(434) 977-6607
(434) 825-5246

**VIRGINIA:
IN THE CIRCUIT COURT FOR THE CITY OF WINCHESTER**

**BESSIE M. GLOVER TRUST
BESSIE M. GLOVER
ROBERT GLOVER
(A/K/A RICH BLUFF, LLC)**

PLAINTIFFS,

V.

CASE # CL 14-384

DIANE'S DINER, LLC

And,

DIANE ASHBY, PERSONNALLY

DEFENDANTS.

**MOTION FOR A PROTECTION ORDER ON ALL DISCOVERY FOR
CASE NUMBER, CL14-384**

COMES NOW the Plaintiffs, (the Glovers here and after) by counsel in response to the Defendants' (Diane's Diner, LLC, *et al.*) First Set of Request for Production and to the First Set of Interrogatories to the Plaintiff, Bessie M. Glover for the Defendants' counter claim and in support thereof, the Plaintiffs, (the Glovers) do say as follows:

- 1) The Plaintiffs have filed a motion to dismiss the case's (CL14-384 and CL14-268) before the court.**

- 2) The Plaintiffs (The Glovers) have asserted a fraud on the court and upon themselves by the Defendants (Diane Ashby & Diane's Diner, LLC).**

- 3) All facts and circumstances of the allegations are comprised under the lease dated November 1, 2006 and as amended on September 9, 2009.

- 4) In order for the Plaintiffs (the Glovers) not to engage or dignify the Defendants (Diane Ashby & Diane's Diner, LLC) fraud on the court and upon themselves (the Plaintiffs are also Defendants in case number, CL 14-268, Diane's Diner, *et al.*, v. Bessie M. Glover, *et al.*) the court is requested to enter a comprehensive protection order on behalf of the Plaintiffs (the Glovers) protecting Bessie M. Glover, Robert Glover, Rich Bluff, LLC, and Bessie M. Glover Trust until the court rules on the Plaintiffs' (the Glovers) Motion to Dismiss the cases filed by Diane Ashby & Diane's Diner, LLC, (CL14-384 & CL14-268).

WHEREFORE, Plaintiffs (The Glovers) pray to this honorable court for the reasons stated above respectfully request the court to enter a comprehensive protection order from all discovery or any other thing.

BY: S/J. Benjamin Dick
J. BENJAMIN DICK
Counsel for the Plaintiffs
Law Offices of J. Benjamin Dick
421 Park Street, Suite 2
Charlottesville, Va 22902
(434) 977-6607
(434) 825-5246

CERTIFICATE OF SERVICE

I do hereby certify that on this 24th day of March, 2015, I sent a true copy of the foregoing by first-class, postage prepaid mail upon:

Matthew S. Akers, Esquire
McCarthy & Akers, PLC
302 W. Boscawen Street
Winchester, Virginia 22601
Counsel for the Defendants and Cross Claimants

S/J. Benjamin Dick
J. Benjamin Dick

VIRGINIA:
IN THE CIRCUIT COURT FOR THE CITY OF WINCHESTER

BESSIE M. GLOVER TRUST
BESSIE M. GLOVER
ROBERT GLOVER
(A/K/A RICH BLUFF, LLC)

PLAINTIFFS,

V.

CASE # CL 14-384

DIANE'S DINER, LLC

And,

DIANE ASHBY, PERSONNALY

DEFENDANTS.

**MOTION FOR AN ORDER OF THE COURT THAT ALL PLAINTIFFS'
REQUEST FOR ADMISSIONS ARE DEEMED ADMITTED**

COMES NOW the Plaintiffs, (the Glovers here and after) by counsel request this honorable court to enter an order deeming the Plaintiffs' Request for Admissions by Defendants (Diane Ashby & Diane's Diner, LLC) be deemed admitted and in support thereof the Plaintiffs (the Glovers) do say as follows:

- 1) The defendants (Diane Ashby & Diane's Diner, LLC) were served with admissions at the time of proof of service of the complaint. All necessary documents were then supplied in the complaint.
- 2) The Request for Admissions are not vague and ambiguous but rather comply with the rules of admissions and are in simple and clear English language.

WHEREFORE, the Request for Admissions by the Plaintiffs (The Glovers) comply as noted above with the rule of admissions and accordingly, the Plaintiffs (the Glovers) by counsel seek an order from this honorable court that the admissions be deemed admitted by the Defendants (Diane Ashby & Diane's Diner, LLC).

BY: S/J. Benjamin Dick
J. BENJAMIN DICK
Counsel for the Plaintiffs
Law Offices of J. Benjamin Dick
421 Park Street, Suite 2
Charlottesville, VA 22902
(434) 977-6607
(434) 825-5246

CERTIFICATE OF SERVICE

I do hereby certify that on this 24th day of March, 2015, I sent a true copy of the foregoing by first-class, postage prepaid mail upon:

Matthew S. Akers, Esquire
McCarthy & Akers, PLC
302 W. Boscawen Street
Winchester, Virginia 22601
Counsel for the Defendants and Cross Claimants

S.J. Benjamin Dick
J. Benjamin Dick

VIRGINIA: IN THE CIRCUIT COURT OF THE CITY OF WINCHESTER

BESSIE M. GLOVER, TRUST, et al.,
Plaintiffs

v.

Civil Action Nos. 14 – 268, 384

DIANE'S DINER, LLC, et al.,
Defendants

RECUSAL ORDER

This case came before the Court on a request for a hearing date and the Court's review of the file.

Upon consideration of the issues raised in the pleadings and the identity of the parties, the Court has decided to recuse itself from hearing this case. The individual principal parties are personally known to the Court, and the Court has dined at the diner in dispute for decades.

Therefore, it is ADJUDGED AND ORDERED that John E. Wetsel, Jr., is RECUSED from hearing this case. This case is referred to the Chief Judge for designation of a judge for further proceedings in this case.

The Chief Judge will notify the parties as to the judge who has been designated to hear this case. The Clerk is further directed to send a copy of this order to counsel of record and to any unrepresented party, who shall file such objections hereto as deemed advisable within ten days of their receipt of a copy of this order. Endorsement is dispensed with pursuant to Supreme Court Rule 1:13.

Entered March 25, 2015.



John E. Wetsel, Jr., Judge

VIRGINIA:
IN THE CIRCUIT COURT FOR THE CITY OF WINCHESTER

BESSIE M. GLOVER TRUST
BESSIE M. GLOVER
ROBERT GLOVER
(A/K/A RICH BLUFF, LLC)

PLAINTIFFS,

V.

CASE # CL 14-384

DIANE'S DINER, LLC

And,

DIANE ASHBY, PERSONNALLY

DEFENDANTS.

**PLAINTIFFS' RESPONSE TO DEFENDANTS' PLEAS IN BAR AND
DEMURRERS**

COMES NOW the Plaintiffs, (the Glovers here and after) by counsel in response to the Defendants' (Diane's Diner, LLC, *et al.*) Pleas in Bar and Demurrers and in sequence numerically as set forth to Defendants' Demurrers and Pleas in Bar, the Plaintiffs do say as follows:

- 1) The Plaintiffs' (the Glovers) lawsuit is based on a fraud on the court and upon the Plaintiffs (the Glovers) arising out of a landlord/tenant lease dated November 1, 2006 and as amended on September 9, 2009, attached to the complaint as Exhibit A and signed and agreed to by both parties. Furthermore, no oral agreement in violation of the parol evidence rule exist and a motion to dismiss the cases (CL14-384 and CL14-268) has been filed by the Plaintiffs and is hereby incorporated and adopted to this response.**

- 2) The Plaintiffs complaint was filed to abate a fraud upon the court and the Plaintiffs (The Glovers) and to retrieve the name "Amherst Diner" from Diane Ashby, not owned by the Defendants (Diane Ashby and Diane's Diner, LLC).**
- 3) Responding to paragraph 3 of the Demurrer, there are not two tribunals involved. Rather, the Circuit Court of Winchester and the United States Patent and Trademark Office are involved, the latter entity being a federal administrative agency. The U.S. District Court is a tribunal.**
- 4) The Plaintiffs (the Glovers) have had to spend money in attorney fees and expenses to correct an injustice inflicted upon them by the Defendants (Diane Ashby & Diane's Diner, LLC).**
- 5) The complaint complies with the rules of the Virginia Supreme Court and adequately informs the Defendants of the claims against them. The complaint more than adequately pleads a cause of action upon which relief is required, i.e., an abatement of a fraud on the court and upon the Plaintiffs (the Glovers) by the Defendants (Diane Ashby & Diane's Diner, LLC).**
- 6) In response to paragraphs 6-9; paragraphs 10-21; paragraphs 22-26; paragraphs 27-32 and paragraphs 33-36, the Plaintiffs (the Glovers) by counsel readopt paragraphs 1-5 of the Plaintiffs' response, and pray to this honorable court that paragraphs 1-36 be stricken by the court as a furtherance and promotion by the Defendants (Diane Ashby & Diane's Diner, LLC) and her counsel of a fraud on the court and on the Plaintiffs (the Glovers). The Defendants (Diane Ashby & Diane's Diner, LLC) do not and never have owned the property (334 Amherst Street) or the name "Amherst Diner." Robert Glover purchased the property and has paid taxes to the city of Winchester, VA on the real property of "334 Amherst Street, Winchester, VA 22601" since the 1950's, and transferred the ownership to the Bessie M. Glover Trust, now known as Rich Bluff, LLC. The tenant is bound by the lease dated (November 1, 2006 and as amended on September 9, 2009) as to terms, responsibilities and duties. The Plaintiffs (the Glovers) here adopt and incorporate their Motion for Partial Summary Judgment,**

here attached, served upon the Defendants (Diane Ashby and Diane's Diner, LLC) at the time of proof of service dated (February 12, 2015) of the complaint.

A. SANCTIONS

COMES NOW the Plaintiffs, (the Glovers here and after) by counsel in response to the Defendants' (Diane's Diner, LLC, *et al.*) in response to the Request for Sanctions by the Defendants and the Plaintiffs do say as follows:

- 1) It is the Defendants (Diane Ashby and Diane's Diner, LLC) and their counsel who should be subject to Sanctions for a fraud on the court and on the Plaintiffs (the Glovers), in this case (CL14-384) and in case number (CL14-268). The latter case by the defendants against the Plaintiffs (the Glovers) and the Pleas in Bar and Demurrers are redundant, inflammatory and violate the code of Virginia; 8.01-271.1 Signing of pleadings, motions, and other papers; oral motions; sanctions, subparagraph (ii) states, "to the best of (counsels) knowledge, information and belief, formed after reasonable inquiry, it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law, and (iii) it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

WHEREFORE, the Plaintiffs (The Glovers) by counsel have responded to the Demurrers and the Pleas in Bar of the Defendants (Diane Ashby and Diane's Diner, LLC) and request that the court deny all of the same and find a fraud on the court and upon the Plaintiffs. The Plaintiffs also request this honorable court to enter an order granting the Motion for Partial Summary Judgement previously served by proof of service of the Complaint on February 12, 2015.

BY: S/J. Benjamin Dick
J. BENJAMIN DICK
Counsel for the Plaintiffs
Law Offices of J. Benjamin Dick
421 Park Street, Suite 2
Charlottesville, Va 22902
(434) 977-6607
(434) 825-5246

CERTIFICATE OF SERVICE

I do hereby certify that on this 26th day of March, 2015, I sent a true copy of the foregoing by first-class, postage prepaid mail upon:

Matthew S. Akers, Esquire
McCarthy & Akers, PLC
302 W. Boscawen Street
Winchester, Virginia 22601
Counsel for the Defendants and Cross Claimants

S/J. Benjamin Dick
J. Benjamin Dick

**VIRGINIA:
IN THE CIRCUIT COURT FOR THE CITY OF WINCHESTER**

**BESSIE M. GLOVER TRUST
BESSIE M. GLOVER
ROBERT GLOVER
(A/K/A RICH BLUFF, LLC)**

PLAINTIFFS

V. CASE # CL14000384-00

DIANE'S DINER, LLC

And,

DIANE ASHBY, PERSONNALLY

DEFENDANTS

MOTION FOR PARTIAL SUMMARY JUDGMENT

COMES NOW THE PLAINTIFFS by counsel who for their motion does state in support thereof as follows:

- 1) The plaintiffs move that the Court grant their motion partially that the law of the case is the written lease of 2006 between the parties as amended in writing in 2009, and the oral lease claimed by the defendants is legally null and void as violating the terms of the written leases. See complaint exhibits A and B here adopted by reference and incorporate hereto.**

Wherefore, the plaintiffs pray to the court that a partial summary judgment in this cause be granted by the court.

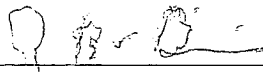
By:

S/J. Benjamin Dick

CERTIFICATE OF SERVICE

I do hereby certify that on this 26th day of March, 2015, I sent a true copy of the foregoing by first-class, postage prepaid mail upon:

Matthew S. Akers, Esquire
McCarthy & Akers, PLC
302 W. Boscawen Street
Winchester, Virginia 22601
Counsel for the Defendants and Cross Claimants



J. Benjamin Dick

VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF WINCHESTER

BESSIE M. GLOVER TRUST, *et al.*,

Plaintiffs,

v.

Case No. CL14-384

DIANE'S DINER, LLC, *et al.*,

Defendants.

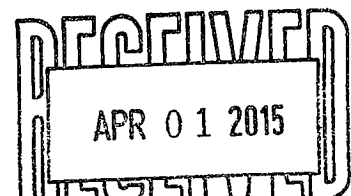
FIRST SET OF REQUESTS FOR ADMISSIONS

COME NOW Defendants Diane's Diner, LLC, t/a Amherst Diner, and Diane Ashby, and pursuant to Rule 4:11, Rules of the Supreme Court of Virginia, and this Court's instructions, request that Plaintiffs Bessie M. Glover Trust, Bessie M. Glover, and Robert Glover, subject to the following instructions and definitions, Admit the following matters:

INSTRUCTIONS

A. The propriety of your responses is governed by the Rules of the Supreme Court of Virginia. Rule 4:11 (a) and Rule 4:12 (c), Rules of the Supreme Court of Virginia, provide in pertinent part as follows:

"The answer shall specifically deny the matter or set forth in detail the reasons why the answering party cannot admit the matter. A denial shall fairly meet the substance of the requested admission, and when good faith requires that a party qualify his answer, or deny only a part of the matter of which an admission is requested, he shall specify so much of it as is true and qualify or deny the remainder. An answering party may not give lack of information or knowledge as a reason for failure to Admit unless he states that he has made reasonable inquiry and that the information known or readily obtainable by him is insufficient to enable him to Admit. A party who considers that a matter of which an admission has been requested presents a genuine issue for trial may not, on that



ground alone, object to the request[.]” Rule 4:11 (a), Rules of the Supreme Court of Virginia.

“If a party fails to admit the genuineness of any document or the truth of any matter as requested under Rule 4:11, and if the party requesting the admissions thereafter proves the genuineness of any document or the truth of the matter, he may apply to the court for an order requiring the other party to pay him the reasonable expenses incurred in making that proof, including reasonable attorney’s fees.” Rule 4:12 (c), Rules of the Supreme Court of Virginia.

B. These Requests for Admissions (“Requests”) are continuing in nature so as to require Plaintiffs to file supplemental answers to the extent required under Rule 4:1(e), Rules of the Supreme Court of Virginia, if any Plaintiff obtains further or different information before trial.

C. Any word written in the singular herein shall be construed as plural or vice versa when necessary to facilitate the response to any Request.

D. Each reference to a firm or company shall be deemed to refer to that firm or company, and its parents, subsidiaries, or associated, affiliated, related or controlled companies.

E. Each Request shall be accorded a separate response.

DEFINITIONS

For purposes of these Requests, the following definitions shall apply:

A. The term “Plaintiff” or “Plaintiffs” shall mean Bessie M. Glover Trust, Bessie M. Glover, Robert Glover, Rich Bluff LLC, their employees, agents, attorneys, and each person acting or purporting to act on their behalf or under their control.

B. The term “the Glovers” shall mean Bessie M. Glover and Robert Glover.

C. The term “Diane’s Diner,” “Defendant,” or “Defendants” shall mean Diane’s Diner LLC, Diane Ashby, their employees, agents, attorneys, and each person acting or purporting to act on their behalf or under their control.

D. The term “Amherst Diner” shall mean Amherst Diner, LLC, a Virginia limited liability company with its principal office in the City of Winchester, Virginia, the sole member of which is Diane Ashby.

E. The term “you” shall mean Bessie M. Glover Trust, Bessie M. Glover, Robert Glover, and Rich Bluff LLC or any Plaintiff individually. The term “you” shall be construed in the singular or the plural as necessary to bring within the scope of the Requests all responses which otherwise might be construed to be outside their scope.

F. The term “the Property” shall mean the property known as 334-338 Amherst Street, Tax Map ID No. 172-01-14 in the City of Winchester, Virginia.

G. The terms “concern” and “concerning” shall mean directly or indirectly relating to, mentioning, describing, comprising, constituting, consisting of, referring to, reflecting upon, summarizing, memorializing, or being in any way logically or factually connected with the subject matter of the documents sought in the Requests in which the terms are used.

H. The terms “relating to” and “referring to” shall be interpreted to mean anything that constitutes, deals with, refers to, or is in any way pertinent or relevant to that given subject, including, but not limited to, documents concerning the preparation of other documents.

I. The terms “communications,” “communicate,” and “communicated” shall mean an oral, graphic, demonstrative, telephonic, verbal, electronic, written or like conveyance of information, including documents.

J. The terms “or” as well as “and” shall be construed disjunctively or conjunctively as necessary in order to bring within the scope of the Requests all responses which otherwise might be construed to be outside its scope.

REQUESTS

1. Admit that Amherst Diner is a Virginia limited liability company with its principal office in the City of Winchester, Virginia.

ANSWER:

2. Admit that Diane Ashby is the sole member of the Amherst Diner.

ANSWER:

3. Admit that Amherst Diner owned and operated a restaurant located at 334 Amherst Street in the City of Winchester, Virginia.

ANSWER:

4. Admit that Bessie M. Glover is a Virginia resident, currently residing in the City of Winchester, Virginia.

ANSWER:

5. Admit that Robert Glover is a Virginia resident, currently residing in the City of Winchester, Virginia.

ANSWER:

6. Admit that Rich Bluff, LLC (“Rich Bluff”) is a Virginia limited liability company with its principal office in the City of Winchester, Virginia.

ANSWER:

7. Admit that the Glovers are the members/ managers of Rich Bluff.

ANSWER:

8. Admit that, during all times relevant to this lawsuit, the Glovers have treated Rich Bluff as their *alter ego*.

ANSWER:

9. Admit that Rich Bluff is the record owner of title of the property known as 334-338 Amherst Street, Tax Map ID No. 172-01-14 in the City of Winchester, where the Amherst Diner operates.

ANSWER:

10. Admit that the Bessie M. Glover Trust is the previous record owner of title of the Property.

ANSWER:

11. Admit that the Glovers serve as Trustees of the Glover Trust.

ANSWER:

12. Admit that, in November 2006, the Amherst Diner began operating its restaurant at the Property.

ANSWER:

13. Admit that the Amherst Diner has grown as a popular local establishment, serving tens of thousands of customers each year.

ANSWER:

14. Admit that Diane Ashby and the Amherst Diner had a lease agreement with Plaintiffs to operate the restaurant at the Property starting in November 2006.

ANSWER:

15. Admit that, over the years, the parties entered into additional lease agreements through the course of business.

ANSWER:

16. Admit that Plaintiffs agreed to make repairs and replacements to equipment on the Property.

ANSWER:

17. Admit that Plaintiffs refused to make certain of these repairs and replacements.

ANSWER:

18. Admit that the Amherst Diner expended a significant amount of money repairing and replacing equipment that the Plaintiffs were required to repair or replace.

ANSWER:

19. Admit that Plaintiffs coerced the Amherst Diner into performing additional work that was not agreed to by the parties by threatening to evict the Amherst Diner from the Property.

ANSWER:

20. Admit that the Plaintiffs agreed not to interfere with the Amherst Diner's business with its customers or employees during its tenancy at the Property.

ANSWER:

21. Admit that, on multiple occasions, Plaintiffs entered the restaurant and caused disruptions by making loud complaints about the food, about the sanitation, and about the temperature of the restaurant, such that the customers could hear.

ANSWER:

22. Admit that, on multiple occasions, Plaintiffs entered the restaurant and made false and injurious statements about the condition of the Amherst Diner's current and future operations within the hearing of customers and employees.

ANSWER:

23. Admit that Plaintiffs have entered the restaurant and harassed employees of Amherst Diner.

ANSWER:

24. Admit that Plaintiffs have interfered with the preparation of the food at the Amherst Diner.

ANSWER:

25. Admit that Plaintiff physically pushed an employee of the Amherst Diner.

ANSWER:

26. Admit that Plaintiffs have forced the Amherst Diner to remove decorations from the restaurant.

ANSWER:

27. Admit that Plaintiffs have attempted to instruct the Amherst Diner employees how to prepare food in a manner contrary to the instructions of the Amherst Diner.

ANSWER:

28. Admit that Plaintiffs have attempted to force the Amherst Diner to prohibit a certain regular customer from dining at the restaurant.

ANSWER:

29. Admit that Plaintiffs attempted to try and prohibit the regular customer from dining at Amherst Diner due to a political disagreement the Glovers had with this individual.

ANSWER:

30. Admit that Plaintiffs have threatened to shut down the business of the Amherst Diner.

ANSWER:

31. Admit that the Plaintiffs have told other individuals that they intend to “bury” the Amherst Diner and/or Ashby.

ANSWER:

32. Admit that, in January 2014, a sewage main line at the Property collapsed.

ANSWER:

33. Admit that fixing the sewage main line was the responsibility of the Plaintiffs.

ANSWER:

34. Admit that Defendants requested that Plaintiffs fix the sewage line in such a manner as not to disrupt the business of Amherst Diner.

ANSWER:

35. Admit that Plaintiffs refused to act expeditiously to fix the sewage main line.

ANSWER:

36. Admit that Amherst Diner had to close for five days during repair of the sewage main line.

ANSWER:

37. Admit that being closed for five days, due to Plaintiffs' failure to act quickly to fix the sewage main line, resulted in significant loss of business for the Amherst Diner.

ANSWER:

38. Admit that Plaintiffs agreed to pay for repairs to the fire suppressant system on the Property.

ANSWER:

39. Admit that Plaintiffs failed to pay for repairs for the fire suppressant system.

ANSWER:

40. Admit that, on or about April 30, 2014, Bessie M. Glover, as Trustee of the Glover Trust and Manager of Rich Bluff, sent a letter to the Amherst Diner instructing the business to vacate the Property within thirty (30) days, or by May 31, 2014.

ANSWER:

41. Admit that Plaintiffs represented to Ashby that they were willing to delay taking any action to evict the Amherst Diner.

ANSWER:

42. Admit that Plaintiffs and Defendants had previous agreements to provide a reasonable period of time to wind up the business at the Property before relocating.

ANSWER:

43. Admit that Defendants relied on these agreements that Plaintiffs would provide a reasonable period of time for the Amherst Diner to wind up business before relocating.

ANSWER:

44. Admit that Defendants spent a significant amount of money repairing pipes and re-upholstering booths at the Property.

ANSWER:

45. Admit that Defendants repaired the pipes and re-upholstered the booths in reliance on the parties' agreement that Amherst Diner could continue in operation at the Property.

ANSWER:

46. Admit that Plaintiffs evicted the Amherst Diner on very short notice.

ANSWER:

47. Admit that Plaintiffs' eviction of the Amherst Diner was unreasonable.

ANSWER:

48. Admit that Plaintiffs' eviction of the Amherst Diner caused the Amherst Diner to incur significant expenses and loss of revenue in moving to a new location.

ANSWER:

49. Admit that Plaintiffs, personally and/ or through agents, took pictures of the vehicles and license plates of those parked at the Amherst Diner.

ANSWER:

50. Admit that Plaintiffs took these pictures, or had an agent take these pictures, in order to intimidate Ashby, customers, and/or employees of the Amherst Diner.

ANSWER:

51. Admit that Plaintiffs, personally and/or through agents, intimidated and harassed Ashby and employees of the Amherst Diner after Defendants moved the restaurant from the Property.

ANSWER:

52. Admit that Plaintiffs, personally and/or through agents, held private and public conversations and conversations in online forums, in which they spread false and malicious information about Ashby and the Amherst Diner.

ANSWER:

53. Admit that Plaintiffs hired contractors to perform work on the Property and then had the bills sent to Defendants.

ANSWER:

54. Admit that Plaintiffs had contractor bills sent to Defendants in order to harass Defendants and injure their reputation in the community.

ANSWER:

55. Admit that Defendants have no adequate remedy at law in order to stop Plaintiffs from interfering with the Amherst Diner's business.

ANSWER:

56. Admit that the balance of equities favors the Amherst Diner because the risk of loss to the Amherst Diner outweighs any potential loss to the Plaintiffs.

ANSWER:

57. Admit that a permanent injunction serves the public interest of preserving the rights of Amherst Diner to carry on the business without interference.

ANSWER:

58. Admit that Defendants and Plaintiffs had a lease agreement whereby Defendants paid Three Thousand Five Hundred and 00/100 Dollars (\$3,500.00) per month.

ANSWER:

59. Admit that Defendants paid each month's rent on time.

ANSWER:

60. Admit that, pursuant to the terms of the lease agreement, Plaintiffs agreed not to interfere with the business of the Amherst Diner.

ANSWER:

61. Admit that Plaintiffs breached the lease agreement through their direct actions--and those of their agents--to interfere, harass and intimidate Ashby, the Amherst Diner, and its employees.

ANSWER:

62. Admit that Plaintiffs' actions, and those of their agents, to interfere, harass, and intimidate resulted in damages to the Amherst Diner.

ANSWER:

63. Admit that Plaintiffs breached the lease agreement by refusing to perform the repairs and replacements required on the Property.

ANSWER:

64. Admit that Plaintiffs promised to allow the Amherst Diner to continue to operate the restaurant at the Property in the future and to provide a reasonable time for the Amherst Diner to move to a new location in the event of termination.

ANSWER:

65. Admit that Plaintiffs breached their promise by unreasonably evicting the Amherst Diner with short notice.

ANSWER:

66. Admit that, as a result of Plaintiffs' breaches, Defendants have suffered considerable damages and are entitled to relief.

ANSWER:

67. Admit that the Amherst Diner has an ongoing business relationship with the hundreds of regular customers who regularly patronize the Amherst Diner and provide a significant economic benefit to the restaurant.

ANSWER:

68. Admit that, at all pertinent times, Plaintiffs have had knowledge of the many patrons and loyal customer base of the Amherst Diner as well as the mutual expectations that the Amherst Diner would continue to operate at the Property for economic benefit.

ANSWER:

69. Admit that there is a reasonable certainty that the Amherst Diner would continue in this profitable relationship with its customers absent Plaintiffs' attempts to interfere.

ANSWER:

70. Admit that Plaintiffs have used and continue to use improper methods to interfere with the business of Amherst Diner.

ANSWER:

71. Admit that, as a proximate and direct result of Plaintiffs' interference, the Amherst Diner has suffered damages in the form of lost business.

ANSWER:

72. Admit that, as a proximate and direct result of Plaintiffs' interference, the Amherst Diner is at risk of losing additional business if the Plaintiffs are allowed to continue interfering with the business of the Amherst Diner.

ANSWER:

73. Admit that the Plaintiffs have worked in combination for the purpose of willfully and maliciously injuring Defendants' business.

ANSWER:

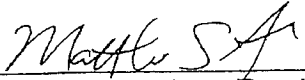
74. Admit that the Plaintiffs' conspiracy has caused significant damages to the Defendants' business and threatens to cause irreparable harm if allowed to continue.

ANSWER:

75. Admit that Defendants have suffered damages in the amount of One Hundred Thousand and 00/100 Dollars (\$100,000.00) due to the actions of Plaintiffs described herein and in Defendants' counterclaim.

ANSWER:

Respectfully submitted,
DIANE'S DINER, LLC,
and DIANE ASHBY,
By Counsel.

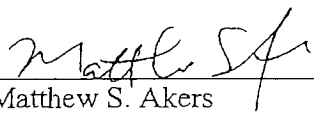

Matthew S. Akers, Esquire
Virginia Bar No. 74615
McCARTHY & AKERS, PLC
302 W. Boscawen Street
Winchester, Virginia 22601
Phone: (540) 722-2181
Fax: (540) 722-2381

Counsel for Defendants Diane's Diner, LLC and Diane Ashby

CERTIFICATE OF SERVICE

I do hereby certify that on this 26th day of March, 2015, I caused a copy of the foregoing to be served *via* e-mail and by first-class, postage-prepaid mail upon:

J. Benjamin Dick, Esquire
Law Offices of J. Benjamin Dick
421 Park St., Suite 2
Charlottesville, VA 22902


Matthew S. Akers

VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF WINCHESTER

BESSIE M. GLOVER TRUST, *et al.*

Plaintiffs,

v.

Case No. CL14-384

DIANE'S DINER, LLC, *et al.*,

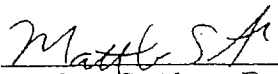
Defendants.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 26th day of March, 2015, a true copy of the foregoing Plaintiff Diane's Diner, LLC's First Set of Requests for Admissions was delivered *via* e-mail and by first-class mail, postage prepaid to the offices of:

J. Benjamin Dick, Esquire
Law Offices of J. Benjamin Dick
421 Park St., Suite 2
Charlottesville, VA 22902

Counsel for the Plaintiffs


Matthew S. Akers, Esquire
Virginia Bar No. 74615
MCCARTHY & AKERS, PLC
302 W. Boscawen Street
Winchester, Virginia 22601
Phone: (540) 722-2181
Fax: (540) 722-2381

Counsel for Defendants Diane's Diner, LLC and Diane Ashby

VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF WINCHESTER

BESSIE M. GLOVER TRUST, *et al.*

Plaintiffs,

v.

Case No. CL14-384

DIANE'S DINER, LLC, *et al.*,

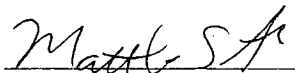
Defendants.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 26th day of March, 2015, a true copy of the foregoing Plaintiff Diane's Diner, LLC's First Set of Requests for Admissions was delivered *via* e-mail and by first-class mail, postage prepaid to the offices of:

J. Benjamin Dick, Esquire
Law Offices of J. Benjamin Dick
421 Park St., Suite 2
Charlottesville, VA 22902

Counsel for the Plaintiffs


Matthew S. Akers, Esquire
Virginia Bar No. 74615
McCARTHY & AKERS, PLC
302 W. Boscawen Street
Winchester, Virginia 22601
Phone: (540) 722-2181
Fax: (540) 722-2381

Counsel for Defendants Diane's Diner, LLC and Diane Ashby

2015 MAR 27 PM 1:25
CITY OF WINCHESTER
CIRCUIT COURT



**VIRGINIA:
IN THE CIRCUIT COURT FOR THE CITY OF WINCHESTER**

**BESSIE M. GLOVER TRUST
BESSIE M. GLOVER
ROBERT GLOVER
(A/K/A RICH BLUFF, LLC)**

PLAINTIFFS

V.

CASE # CL 14-384

DIANE'S DINER, LLC

And,

DIANE ASHBY, PERSONNALLY

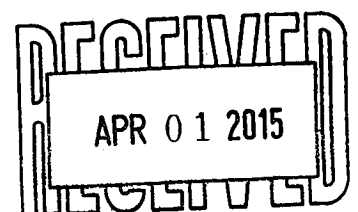
DEFENDANTS

2015 MAR 30 PM 2:04

SECOND MOTION FOR PROTECTION ORDER

COMES NOW the plaintiffs by counsel who move for a second protection order from Defendants' Admissions Request filed with this counsel by e-mail dated March 25, 2015 and in support thereof, do sayeth as follows:

- 1) Plaintiff adopts and cross references Plaintiffs' previously filed Motion for Protection Order and Motion to Dismiss. The Defendants' First Request for Admissions are 62 in number and improperly increase the cost of litigation.**



**WHEREFORE, FOR THE REASONS STATED ABOVE, A
PROTECTION ORDER is duly requested to be entered by this Honorable
Court.**

By: JBD
J. BENJAMIN DICK, ESQ.
421 PARK ST. SUITE # 2
Charlottesville, Va. 22902
434=825-5246 (Cell)

Certificate

**I certify a true copy of this motion was mailed to Matthew Ackers
Esq. this 30thth day of March 2015.**

S/ J. Benjamin Dick



VIRGINIA: IN THE CIRCUIT COURT OF THE CITY OF WINCHESTER

BESSIE M. GLOVER, TRUST, ET AL

v.

CIVIL ACTION NOS. 14-268, 384

DIANE'S DINER, LLC, ET AL

ORDER

IT APPEARING by an Order entered on March 25, 2015, the Honorable John E. Wetsel, Jr., Judge, who sits as the resident Judge in the Circuit Court of the City of Winchester and so generally hears cases pending in it, was recused in this matter and further that this matter was referred to the Honorable Thomas J. Wilson, IV, Chief Judge, for the designation of a Judge for further proceedings;

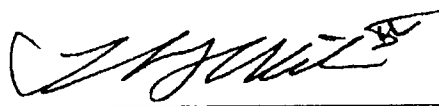
It is hereby ORDERED that this matter is assigned to the Honorable Ron L. Napier, for further proceedings, including final disposition.

Counsel are directed to confer with Terry Whittle, Clerk, Circuit Court of the City of Winchester, Virginia, at 540-677-5770, respecting all further proceedings in this cause.

The Clerk shall further certify a copy hereof to counsel of record and to all Judges of the Twenty-Sixth Judicial Circuit.

ENTERED: April 23rd, 2015.

*mailed
4/23/15*

ENTER: 
Thomas J. Wilson, IV
Chief Judge

RECEIVED
APR 30 2015

VIRGINIA:

IN THE CIRCUIT COURT OF WINCHESTER CITY

BESSIE M. GLOVER TRUST, *et al.*, :

Plaintiffs, :

v. :

Case Nos. CL14-384-00, CL14-384-01,
and CL14-268-00

DIANE'S DINER, LLC, *et al.*, :

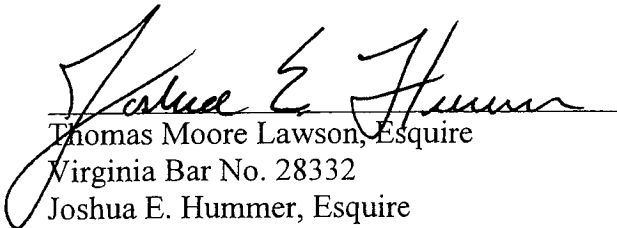
Defendants. :

PRAECIPE

TO THE CLERK OF THIS HONORABLE COURT:

PLEASE ENTER THE APPEARANCE of Thomas Moore Lawson, Esquire, Joshua E. Hummer, Esquire, and the law firm of Lawson and Silek, P.L.C. as counsel for Plaintiffs Bessie M. Glover Trust, et al. in the above matters.

Respectfully submitted,
BESSIE M. GLOVER TRUST, et al.
By Counsel



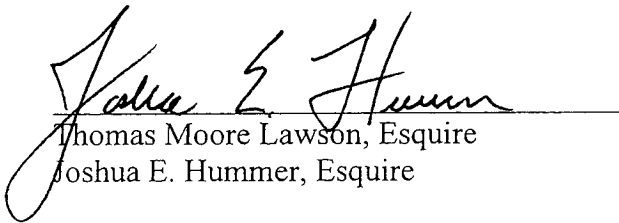
Thomas Moore Lawson, Esquire
Virginia Bar No. 28332
Joshua E. Hummer, Esquire
Virginia Bar No. 71094
Lawson and Silek, P.L.C.
P. O. Box 2740
Winchester, VA 22604
Phone: (540) 665-0050
Fax: (540) 722-4051
Email: tlawson@lspcl.com
jhummer@lspcl.com

Counsel for Plaintiffs Bessie M. Glover Trust, *et. al*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 28th day of April, 2015, the foregoing Praecipe was mailed first-class, postage prepaid to:

Matthew S. Akers, Esquire
McCarthy & Akers, PLC
302 W. Boscawen Street
Winchester, VA 22601

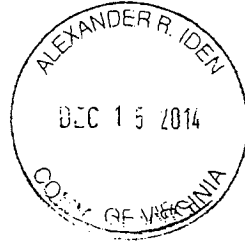

Thomas Moore Lawson, Esquire
Joshua E. Hummer, Esquire



THE KOONTZ LAW FIRM

GLEN FRANKLIN KOONTZ
POST OFFICE BOX 1176
BERRYVILLE, VIRGINIA 22611
540.550.7067
GFK@GLENFRANKLINKOONTZ.COM

December 12, 2014



2014 DEC 16 PM 3:29
RECEIVED
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COURT

BY FACSIMILE AND FIRST CLASS MAIL

Mr. Alexander R. Iden
Commonwealth's Attorney
Joint Judicial Center
5 North Kent Street
Winchester, Virginia 22601

Re: *Commonwealth v. Michael Ashby*

Dear Mr. Iden:

Per our telephone conversation this afternoon, I represent Michael Ashby with respect to the Winchester Police Department's investigation, and any criminal charges arising out that investigation, that made be handed down by the Grand Jury on December 16, 2014. It is my understanding that Mr. Ashby should be present at the Joint Judicial Center, Courtroom 3D, at 2:00 p.m. on December 16, where he can expect to receive an unsecured bond. Due to a trial in Henry County, Virginia Circuit Court, I am unable to accompany Mr. Ashby on that date.

I also understand—and will confirm—that Mr. Ashby's first appearance will be on Friday, January 16, at either 9 or 10:00 a.m. I will file a Praeipce formally entering my appearance on or before that date.

Thank you for your courtesy and assistance in this regard. Please contact me if you have any questions. I look forward to seeing you on January 16.

Very truly yours,

Glen Franklin Koontz

GFK/eeg

For Telly

CR14-1291-1293

VIRGINIA:

IN THE CIRCUIT COURT FOR THE CITY OF WINCHESTER

COMMONWEALTH OF VIRGINIA

Docket No: JYCR 1291-1293

Michael Ashby^{v.}

DISCOVERY and INSPECTION ORDER

Pursuant to rule 3A:11 the Court does ADJUDGE and order as follows:

1. That the Commonwealth of Virginia:

- A.) Permit the accused to inspect and copy or photograph any evidence provided for in Rule 3A:11(b)(1) and (2).
- B.) Relevant as used in Rule 3A:11(b)(1) and material as used in Rule 3A:11(b)(2) shall mean any evidence that the Commonwealth intends to proffer or introduce into evidence at trial or sentencing.

2. That the accused:

- A.) Permit the Commonwealth to inspect, copy or photograph that evidence provided for in Rule 3A:11(c)(1) that may be within the accused possession, custody or control and which the defense intends to proffer or introduce into evidence at trial or sentencing at provided in Rule 3A:11(c)(1).
- B.) Disclose whether the accused intends to introduce evidence to establish an alibi and, if commission of the alleged offense. Rule 3A:11(c)(2).
- C.) If the Accused intends to rely upon the defense of insanity or feeblemindedness, the accused shall permit the Commonwealth to inspect, copy or photograph that information provided for in Rule 3A:11(c)(3), but subject to the limitations contained therein.

3. The Commonwealth shall also disclose or make available to the accused:

- A.) Pursuant to the Authority enunciated in Brady v. Maryland, 373 U.S. 83, 83 S.Ct. 1194, to L.Ed.2d 215 (1963); United States v. Agurs, 427 U.S. 97, 96 S.Ct. 2392, 49 L.Ed.2d 342 (1976); Stover v. Commonwealth, 219 Va. 1113, 253 S.E.2d 655 (1997), all information of whatever form, source or nature, which tends to exculpate the accused or reduce the penalty which the accused might suffer should the accused be convicted in this cause, though an indication of innocence or through potential impeachment of any prosecution witness, by it by inconsistent statements or otherwise.
- B.) Pursuant to the authority enunciated in Giglio v. United States, 405 U.S. 150, 92 S.Ct. 763, 31 L.Ed.2d 104 (1972), Nepue v. Illinois, 360 U.S. 264, 79 S.Ct 1173, 3 L.Ed.2d 1217 (1959), all evidence, affecting the credibility of any prosecution witnesses, including but not limited to, the contents of any plea negotiation between

the Commonwealth and such witness, any agreement to give assistance, compensation or suggest a possible benefit to be conferred upon any prosecution witness.

- C.) A copy of the criminal record (either a CCRE or NCIC printout shall be deemed sufficient) of all witnesses (other than law enforcement officers) who will be called to testify at the trial of this matter. Such information shall be made available to counsel for the accused no later than 8:30 A.M., on the morning of the trial.
- D.) The name and address of every informant utilized by the Commonwealth in the investigation of this matter and who was an eye witness to the alleged offense together with a CCRE or NCIC printout of this criminal record. This information shall be made available to the accused at the same time that all other information to be made available pursuant to this Order, excepting, that information set forth in subparagraph(c), above.

3. This order is entered pursuant to Rule 3A:11 of the Rules of the Supreme Court of Virginia and said Rule is incorporated herein by reference thereto.

4. The parties shall comply with the provisions of this order on or before the 15th day of January 2015, and this Order is continuing in nature pursuant to Rule 3A:11(g).

Enter this 16th day of DEC, 20 14.

JUDGE 


Attorney for the Commonwealth

Attorney for the Defendant
Olen Franklin Krontz
P.O. Box 1176
Berryville, Va 22611
(540) 550-7067

VIRGINIA:
IN THE CIRCUIT COURT FOR THE CITY OF WINCHESTER
COMMONWEALTH OF VIRGINIA

v

Docket No: CR14001291-1293-00

MICHAEL H ASHBY

SCHEDULING ORDER

On this 16TH DAY OF DECEMBER, 2014 came the defendant in these proceedings. Appearing for the Commonwealth was DEREK C ASTON, Esquire and a Court Reporter was present and duly sworn. **Glen Franklin Koontz, Esquire WAS NOT PRESENT.**

DISCOVERY

A Discovery and Inspection order, in the form used by this Court, was entered ordering the Commonwealth to provide discovery to the defense as specified.

DEFENSE MOTION

Within ten days of receipt of the discovery provided, the defense shall file any pretrial motions that it deems advisable, based upon the discovery responses filed by the Commonwealth. Such as:

1. Motion for examination of the defendant to determine competency to stand trial(19.2-2-169.1) sanity at the time of the alleged offense (19.2-169.5), or, in a capital murder case pursuant to Code Section 19.2-264.3:1.
2. Any defense or objection based upon a defect in the institution of the prosecution charge upon which the accused is to be tried pursuant to Supreme Court Rule 3A:9(b)(1).
3. Any objection to the Discovery provided by the Commonwealth.
4. Any motion to suppress any evidence that the defense has reasonable grounds to believe that the Commonwealth will introduce into evidence based on the Discovery responses of the Commonwealth and which the defense moves to exclude from evidence.
5. All motions shall be in writing and be accompanied by written memorandum of authorities in support of the motion, which shall include copies of all major authorities relied upon.

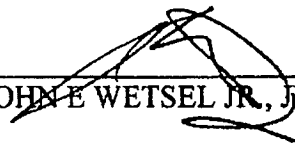
The cases are continued to JANUARY 20, 2015 AT 10:00 AM for further proceedings.

DEFENDANT'S STATUS



The Court released him on his own recognizance and on the added conditions set forth in the order entered by this Court on December 12, 2012.

Entered on DECEMBER 16, 2014



JOHN E WETSEL JR., JUDGE

VIRGINIA:

IN THE CIRCUIT COURT FOR THE CITY OF WINCHESTER

COMMONWEALTH OF VIRGINIA

Docket No: CR14001291-1293-000

MICHAEL H ASHBY

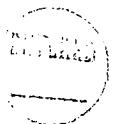
PRE-TRIAL ORDER

On this 20TH day of JANUARY 2015, came the defendant in these proceedings together with GLEN KOONTZ, ESQUIRE, his attorney. Appearing for the Commonwealth was DEREK C ASTON, ESQUIRE. The Court enters this order to promote the orderly and expeditious trial of the case(s).

The case(s) shall be tried before a Felony Venire on APRIL 27, 2015 AT 10:00 AM.

On or before 21 days prior to the trial, the defendant shall notice any insanity defense pursuant to Virginia Code Section 19.2-168. Insanity shall include, but not be limited to, feeble mindedness, somnambulism, epilepsy, or any other physical or mental condition of the defendant that shall be claimed to absolve the defendant of criminal culpability for the crimes charged.

1. On or before ten days prior to trial, the defendant shall file:
 - a. Notice of any alibi defense pursuant to Virginia Supreme Court Rule 3A: 11©(2)
 - b. Written reports of any scientific tests to be proffered or entered into evidence pursuant to Rule 3a: 11(c)
 - c. If the Commonwealth intends to introduce evidence of other crimes of the defendant at trial for purposes other than impeachment, then The Attorney for the Commonwealth shall on or before ten days prior to trial, provide to the defendant a written description of the crimes, along with the relevance to the pending case. See Friend The Law of Evidence in Virginia, 12-14 and 12-15(4th edition, 1993)

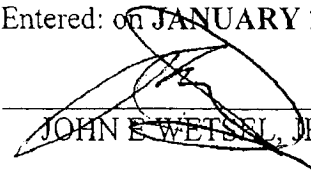


- d. Motions not heretofore addressed which the defense wishes the Court to rule upon in advance of the trial.
2. All motions filed shall be in writing and shall be accompanied by written memorandum of authorities supporting the motions. These, along with a copy of all written objections, motions, and copies of all major authorities relied upon shall be sent to the Judge at The Judicial Center, 5 N. Kent Street, Winchester, Virginia 22601.
3. Five days before trial, counsel for The Commonwealth shall file with the presiding judge and deliver a copy to defense counsel the instructions he intends to present to the Court.
 - a. A list of any instructions from the Model Jury Instructions that are to be offered, identified by title and number, the actual instructions will be provided the morning of the trial.
 - b. Copies of any non-model instructions to be offered shall have supporting citations and copies of supporting authority.
 - c. If counsel for the defendant will object to the Commonwealth's instructions on substantive grounds, or offer additional instructions, he shall file and deliver such objections and additional instructions as provided above and no later than two days prior to trial.
 - d. The Commonwealth's instructions shall be numbered in the lower right corner, and the defendant's instructions shall be lettered in the lower right corner.
4. Two (2) days before trial, the parties shall file with the trial judge and exchange with each other their proposed questions to be asked jurors on their voir dire.
5. If the defense plans to make a motion to strike on grounds that are reasonably foreseeable, it shall prepare a written memorandum that shall be submitted to the Court at the time the motion to strike is made during the trial. The motion shall be specific and refer to authorities that the defense maintains should govern the Court's ruling on the motion. It shall also contain copies of the major authorities relied upon by the defense.

The cases are continued to APRIL 6, 2015 AT 9:00 AM **for argument on any motions that may be filed. Otherwise, this case is continued to APRIL 27, 2015 the date set for trial. The Court continued his bail and on the added conditions set forth in the order entered by this Court on December 12, 2012. Judge Wetsel recused himself, and Judge Napier will hear this matter.**

The Court did advise the defendant failure to appear for trial could result with the trial being held without the defendant's presence. A copy of this order shall be given to counsel by the clerk and each shall have ten days to file any objection thereto.

Entered: on JANUARY 21, 2015



JOHN E. WETSEL, JR. Judge

VIRGINIA:

IN THE CIRCUIT COURT FOR THE CITY OF WINCHESTER
COMMONWEALTH OF VIRGINIA

VS. DOCKET NO.: 14CR1291-1293

Michael Howard Ashby "aka" Mike Howard Ashby

DEFENDANT

NOTICE OF INTENTION TO INTRODUCE DEFENDANT'S

PRIOR CONVICTIONS

Comes now the Commonwealth, by her Commonwealths Attorney, Alexander R. Iden and pursuant to the Discovery Response filed on January 15, 2015 advises this Court that the Commonwealth intends to introduce the following criminal convictions of the defendant at the trial of this case.

1. Grand Larceny, Clarke County Circuit Court, Virginia, felony, Convicted: March 17, 1975; SENTENCE: one year in the penitentiary to be released on April 1, 1975 from confinement, four years' probation; and
2. Breaking and Entering, Clarke County Circuit Court, Virginia, felony, Convicted: March 17, 1975; SENTENCE: two years in the penitentiary to

2015 FEB 23 AM 5:14

be released on April 1, 1975 from confinement,
four years' probation; and

3. Grand Larceny, Clarke County Circuit Court,
Virginia, felony, Convicted: March 17, 1975;
SENTENCE: one year in the penitentiary to be
released on April 1, 1975 from confinement, four
years' probation; and
4. Breaking and Entering, Clarke County Circuit
Court, Virginia, felony, Convicted: March 17, 1975
from confinement; SENTENCE: one year in the
penitentiary to be released on April 1, 1975, four
years' probation; and
5. Grand Larceny, Clarke County Circuit Court,
Virginia, felony, Convicted: March 17, 1975;
SENTENCE: one year in the penitentiary to be
released on April 1, 1975 from confinement;
SENTENCE: one year in the penitentiary to be
released on April 1, 1975 from confinement, four
years' probation; and
6. Breaking and Entering, Clarke County Circuit
Court, Virginia, felony, Convicted: March 17,
1975; SENTENCE: one year in the penitentiary to


be released on April 1, 1975 from confinement,
four years' probation;

7. Grand Larceny, Clarke County Circuit Court,
Virginia, felony, Convicted: March 17, 1975;
SENTENCE: one year in the penitentiary to be
released on April 1, 1975 from confinement; four
years' probation; and
8. Breaking and Entering, Clarke County Circuit
Court, Virginia, felony, Convicted: March 17,
1975; SENTENCE: one year in the penitentiary to
be released on April 1, 1975 from confinement,
four years' probation.

Copy of the aforementioned conviction will be
delivered to defense counsel on the trial date and a certified
copy of the aforementioned conviction will be given to the
Court on the trial date.


Respectfully Submitted,

COMMONWEALTH OF VIRGINIA

BY: 
for Alexander R. Iden,
Commonwealth's Attorney

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Notice was first class postage paid to Glen F. Koontz, Counsel for the Defendant at PO Box 1176, Berryville, VA 22611 on this 23rd day of February 2015.



So Alexander R. Iden,
Commonwealth's Attorney

IN THE CIRCUIT COURT FOR THE CITY OF WINCHESTER, VIRGINIA

COMMONWEALTH OF VIRGINIA

v.

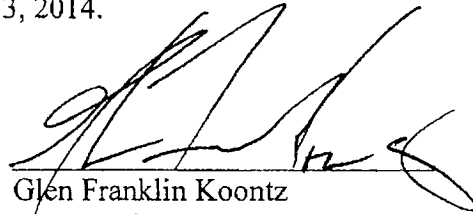
No. 14CR1291-1293

MICHAEL ASHBY

Defendant.

MICHAEL ASHBY'S NOTICE OF ALIBI

Michael Ashby, pursuant to Virginia Supreme Court Rule 3A:11 (c) (2), notifies the Commonwealth of his intention to introduce into evidence at trial of this matter information establishing an alibi. Specifically, Michael Ashby intends to introduce into evidence at trial of this matter information establishing that he was at 3335 Valor Drive, Winchester, Virginia at the time of the incidents complained of on September 13, 2014.

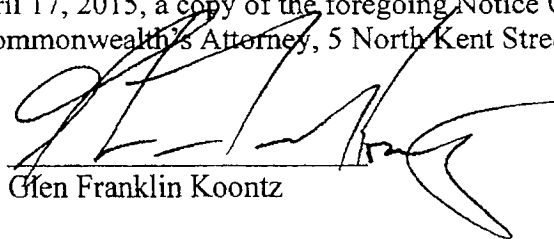


Glen Franklin Koontz
THE KOONTZ LAW FIRM
Post Office Box 1176
Berryville, Virginia 22611
540.550.7067
gfk@glenfranklinkoontz.com

April 17, 2015

CERTIFICATE OF SERVICE

The undersigned certifies that on April 17, 2015, a copy of the foregoing Notice Of Alibi was hand delivered to Alexander R. Iden, Commonwealth's Attorney, 5 North Kent Street, Winchester, Virginia 22601.



Glen Franklin Koontz

2015 APR 17 PM 12:54





THE KOONTZ LAW FIRM

GLEN FRANKLIN KOONTZ
POST OFFICE BOX 1176
BERRYVILLE, VIRGINIA 22611
540.550.7067
GFK@GLENFRANKLINKOONTZ.COM

April 21, 2015

BY HAND

Clerk
Winchester Circuit Court
5 North Kent Street
Winchester, Virginia 22601

Re: *Commonwealth v. Michael Ashby*, 14CR 1291-1293

Sir/Madam:

Please issue subpoenas compelling the following individuals to appear at trial on April 27, 2015 at 9:00 a.m.:

Jeffrey Harvey
212 Greywolf Trail
Winchester, Virginia 22602

Terry Harvey
212 Greywolf Trail
Winchester, Virginia 22602

I have attached ~~2~~ self-addressed, stamped envelopes, in which I ask that you please mail the subpoenas to me at your earliest convenience. Thank you.

Very truly yours,

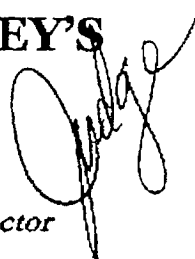
Glen Franklin Koontz

GFK/eeg

Attachments

2015 APR 21 PM 12:12
147

WINCHESTER COMMONWEALTH'S ATTORNEY'S VICTIM WITNESS PROGRAM



Alexander Iden - Commonwealth's Attorney

Jim Pearce - Victim Witness Director

Mandy Vecero - Assistant Director

Joint Judicial Center
5 North Kent Street
Winchester, Virginia 22601
(540) 667-5770 Extension 431 or 473
Fax (540) 665-9087

RESTITUTION STATEMENT

January 22, 2015

*2 SIDED
COPIES*

COMMONWEALTH VS ASHBY, MICHAEL

DOCKET NUMBER: 14CR1291

OFFENSE: DEST. OF PROPERTY

VICTIM INFORMATION

VICTIM #1: ERIE INSURANCE CLAIM #:195135

AMOUNT OF LOSS: \$5,749.60 *2509.00*

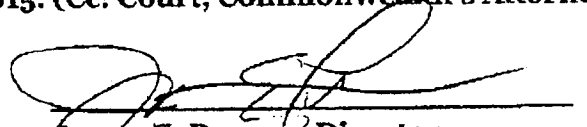
VICTIM #2: RICH BLUFF LLC

AMOUNT OF LOSS: \$200.00

TOTAL AMOUNT OF RESTITUTION FROM THIS DEFENDANT: \$5,949.60

CERTIFICATION

I, James E. Pearce, Victim Witness Director for the City of Winchester, certify that the data contained herein is a true copy of the Restitution Statement provided to the Commonwealth's Attorney on this 22nd day of January 2015. (Cc: Court, Commonwealth's Attorney & Defense)


James E. Pearce - Director
Winchester Victim Witness Program

2015 APR 27 AM 11:04

2015 JAN 28 AM 9:20

TERRY H. WHITFIELD, CLERM
FEDERAL BUREAU OF INVESTIGATION
U.S. DEPARTMENT OF JUSTICE

Graphics North, LLC

706 Fort Collier Rd.
Winchester, Va 22601
(540)678-4965
(540)868-2276

Invoice

DATE	INVOICE #
11/18/2014	3521

BILL TO	SHIP TO
Rich Bluff, LLC 316 Ridge Ave. Winchester, Va 22601	Bob Glover Amherst Diner 334 Amherst St. Winchester, Va

P.O. NO.	TERMS	Project
Verbal	50%down/Bal. day of completion	4326

QUANTITY	DESCRIPTION	RATE	AMOUNT
2	Sets red neon glass words - BREAKFAST, LUNCH, DINNERS as per quote dated 10-31-14, materials.	840.00	1,680.00T
1	Labor for above, installed.	1,000.00	1,000.00
	Sales Tax	5.30%	89.04

2015 APR 27 AM 11:04

Thank you for your business.

Total \$2,769.04



Signs, Neon and Outdoor lighting.
Repair, service, and installation of all signs, neon and outdoor lighting systems. Repairs and light bulbs changed up to 42 ft.

VIRGINIA:

IN THE CIRCUIT COURT FOR THE CITY OF WINCHESTER

COMMONWEALTH OF VIRGINIA

2015 APR 27 AM 11:04

VS.

DOCKET NOS: 14CR1291-1293

Michael Ashby Defendant

PLEA AGREEMENT FOR SPECIFIC SENTENCE

1. The defendant stands charged in the City of Winchester, Virginia of the following offenses:

Docket Number	Offense Date	Charge	Maximum Penalty	Disposition
14CR1291	9/8/14	Felony Destruction of property	5 years	Deferred finding to the felony for 1 year pending good behavior and restitution
14CR1292	9/8/14	TRESPASSING	1 year	Nolle Prosequi
14CR1293	9/13/14	TRESPASSING	1 year	Nolle Prosequi
TOTAL TIME OF CONFINEMENT:	7 years possible, reduced to 5 After motion for nolle prosequi. If the defendant completes the conditions of the deferred finding on the felony, the Commonwealth agrees to reduce the charge to MISDEMEANOR destruction of property with 12 months All suspended and 1 Additional year of good behavior.			

- The Commonwealth agrees to: withhold finding on 14CR1291 for 1 year conditioned on payment of restitution, good behavior, and a bar from the property of the Amherst Diner, Car Doctors, and the Glovers residence.
- The Defendant agrees to stipulate that the evidence is sufficient for findings of guilt to felony destruction of property and consents to the disposition as indicated in paragraph 1 above. The Defendant shall be placed on a period of supervised probation for a period of 1 year pending the deferred disposition unsupervised
- LICENSE SUSPENSION: None
- RESTITUTION: The Commonwealth and the Defendant agree that the amount of restitution in this case is a total of: \$2,769.04 as outlined in the restitution statement dated JANUARY 22, 2015. During the period of probation, the Defendant shall make minimum monthly

payments in the amount of Full payment of ~~until~~ the restitution is ~~paid in full~~. The allocation collection of the restitution shall be handled by the Winchester Circuit Court Clerk's Office.

6. It is understood by the Defendant that the Court may accept or reject this agreement.
7. The Defendant understands that, if the Plea Agreement is accepted upon pleas of guilty the defendant waives all rights to a jury trial and to appeal the verdict of the Court. The Defendant also understands and acknowledges that, if the Plea agreement is accepted upon pleas of guilty, then the defendant has no grounds to appeal any non jurisdictional issues in this case that arose prior to the entry of the plea and that the right to appeal was fully explained by the defendant's attorney. The defendant does not wish to appeal this matter to the Virginia Court of Appeals.
8. The Court has not participated in any way in any discussions leading to this Plea Agreement.
9. The Defendant, Counsel for the Defendant, and the Attorney for the Commonwealth agree that the written Plea Agreement contains all the terms of the agreement between them.
10. By the Defendant's signature below, the Defendant acknowledges that, if this agreement is accepted by the Court, that the Defendant is waiving his Fourth Amendment right against unreasonable searches and seizures during the probationary period specified in paragraph 3 above. Specifically, during the period of supervised probation, the Defendant shall submit his person, place of residence and property to search and seizure by any law enforcement officer at any time of day or night with or without reasonable suspicion, probable cause or a warrant.
11. By the Defendant's signature below, the Defendant acknowledges that, if this agreement is accepted by the Court, the Defendant gives up his right to ask the Court for a sentence modification pursuant to Virginia Code §19.2-303, and no hearing shall be set unless agreed to by the Commonwealth.
12. The Defendant acknowledges that each and every particular of the above agreement and the effect thereof were fully explained by Counsel for the Defendant, Michael Ashby and that the Defendant entered into this agreement freely and voluntarily and without promise or threat from any source, and that the Defendant respectfully requests the Court to accept this agreement.

JLN

Given under our hands this 27th day of April, 2012. 2015

Michael Ashby
 Defendant

[Signature]
 Attorney for Defendant

109 Inc 2 Tr 2
 Winchester V
 224

COMMONWEALTH OF VIRGINIA

BY: Virginia L. [Signature]
 Attorney for the Commonwealth
 City of Winchester

WINCHESTER CIRCUIT COURT
INDIVIDUAL ACCOUNT STATUS REPORT
NEW RESTITUTION JUDGMENTS
CRIMINAL FOR 04/27/15

Restitution
Scan only

COURT STAMP AREA

BOOK:

PAGE:

INSTRUMENT #:

2015 APR 28 AM 11:48

TYPE OF FILING: ABSTRACT OF JUDGMENT

DATE OF JUDGMENT: 04/27/2015


JUDGMENT AMOUNT: \$2,769.04 (SUM CERTAIN)

PLAINTIFF:

DEFENDANT NAME: ASHBY, MICHAEL H
ADDRESS: 109 INCA TRAIL, WINCHESTER, VA. 22602
DOB: 08/30/1955
SSN: XXX-XX-1857
CASE: CR14001291-00

JUDGMENT NOTES: _____

CLERK OF COURT: TERRY H. WHITTLE

BY:  _____ (DEPUTY CLERK)

VIRGINIA:

IN THE CIRCUIT COURT FOR THE CITY OF WINCHESTER

COMMONWEALTH OF VIRGINIA

v

Docket No: CR14001291-00

MICHAEL H ASHBY

DEFERRED DISPOSITION ORDER

On this 27TH day of APRIL, 2015 came the Assistant Attorney for the Commonwealth and the accused, who appeared in person with **GLEN KOONTZ** Esquire, his attorney. A Court reporter was present and duly sworn.

The Attorney for the defendant moved the Court to allow his client to enter a plea to the charge contained in the indictment. The Court directed the Clerk to arraign the defendant, and upon inquiry as to his plea; the defendant responded that he stipulated that the facts were sufficient to sustain a finding of guilt in this matter.

In accordance with the plea, the evidence proffered and the written plea agreement, the Court found the evidence was sufficient to sustain a finding of guilt in this matter, but withheld adjudication and continued this matter from today to **MAY 17, 2016**, at 9:00 AM FOR Final Disposition as contemplated in the written plea agreement.

The Court released the defendant on the conditions set forth below:

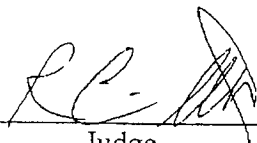
- 1. The defendant shall be of good behavior and violate no criminal laws of this Commonwealth or any other jurisdiction.**
- 2. The defendant shall be banned from all property owned or leased by AMHERST DINER, CAR DOCTORS, AND THE RESIDENCE OF ROBERT GLOVER in the world.**
- 3. The Court ordered him to pay Restitution in the amount of \$2769.04. (The defendant owes \$200.00 to RICH BLUFF LLC, and \$2569.04 to ERIE INSURANCE CO. Payments are to be made through the Winchester Circuit Court.**

If compliant, then the defendant will be found guilty of a Misdemeanor Destruction of Property and sentenced as contemplated in the written plea agreement. If not, then the defendant will be found guilty of the original charge, and the case will proceed to sentencing.

The Court costs will be assessed court costs upon conviction and sentencing.

Entered on APRIL 27, 2015





Judge

VIRGINIA:

IN THE CIRCUIT COURT FOR THE CITY OF WINCHESTER

COMMONWEALTH OF VIRGINIA

v

Docket No: CR14001292-00, 1293-00

MICHAEL H ASHBY

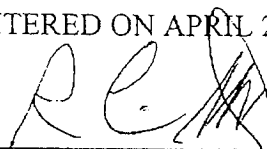
ORDER OF NOLLE PROSEQUI

On this 27TH DAY OF APRIL, 2015 came the Assistant Attorney for the Commonwealth and the accused who appeared with GLEN KOONTZ, ESQUIRE his attorney.

The Attorney for the Commonwealth moved for an Order of Nolle Prosequi on the charges contained in the indictment and proffered reasons for the motion. The attorney for the defendant did not object.

The Court sustained the motion and entered an Order of Nolle Prosequi and directed the Clerk to place these cases among the ended criminal cases. The Court released the defendant from any further prosecution on this charge.

ENTERED ON APRIL 27, 2015



Ronald L. Napier Judge

