

IN THE CIRCUIT COURT FOR SHELBY COUNTY, ALABAMA

SHELBY COMMERCE PARK LLC, and
RICHARD T. DARDEN,

Plaintiffs,

v.

MARY LEE WAGNER COURIC – and her
heirs or devisees, if deceased; CHARLES
O'NEAL BAILEY – and his heirs or devisees,
if deceased; SARA DAVIS REDMOND – and
her heirs or devisees, if deceased;
CHARLOTTE GRAHAM DALY; EDWARD
CARLTON and LAURA CARLTON – and their
heirs or devisees, if deceased; S.M. TATUM
and MARY E. TATUM – and their heirs or
devisees, if deceased; AND ANY AND ALL
OTHER PERSONS claiming, or reputed to
claim, any title to, interest in, lien, or
encumbrance on the land described in this
complaint or any part thereof,

AND IN REM AGAINST:

All that parcel of land bounded by and enclosed
within the following described lines, Viz:,
Commence on the section line at a point Nine
Hundred and Seventy-Eight (978) feet north of
the northwest corner of Section 33, township 21,
Range 2 West; thence north along the section
line two hundred and ten (210) feet to a wire
fence and stake; thence west sixteen (16)
degrees south eight hundred and twenty-five
(825) feet to the right-of-way of the L. & N.
Railroad; thence south along the eastern
boundary line of said right-of-way of L. & N.
Railroad two hundred and ten (210) feet to a
stake; thence east sixteen (16) degrees north
eight hundred and twenty-five (825) feet to
section line and starting point, containing four
(4) acres, more or less, situated in the northern
part of the southeast quarter of the southeast
quarter (S.E. ¼ of S.E. ¼) of Section twenty-
nine, township twenty-one (21) range two (2)
west,

Defendants.

CIVIL ACTION NO. CV 2000-522

Inst # 2000-18613

06/06/2000-18613
09:56 AM CERTIFIED
SHELBY COUNTY JUDGE OF PROBATE
007 MMS 23.50

LIS PENDENS

IN THE CIRCUIT COURT FOR SHELBY COUNTY, ALABAMA

NOTICE IS HEREBY GIVEN that the above-styled Plaintiffs, on the 6 day of June, 2000, commenced an action to quiet title and for a declaratory judgment against the property described on Exhibit A (the "Property").

In the quiet title action Plaintiffs allege, among other things, the following:

1. Plaintiffs are the owners of certain real property located in Shelby County, Alabama, described more fully on Exhibit A hereto, which exhibit is incorporated herein by reference. The real property described on Exhibit A shall be referred to as "Parcel A."

2. Plaintiffs are also the owners of certain real property located in Shelby County, Alabama which is more fully described on Exhibit B hereto, which exhibit is incorporated herein by reference. The real property described on Exhibit B shall be referred to as "Parcel B." Parcel A surrounds Parcel B, as shown on the survey map attached hereto as Exhibit C, which exhibit is incorporated herein by reference.

3. Plaintiffs and Plaintiffs' predecessors in title have, within the ten years preceding the filing of this complaint, been in peaceable possession of Parcel B, assessed Parcel B for taxes, and paid the taxes on Parcel B. Plaintiffs know of no other persons who have had possession of Parcel B, who have assessed Parcel B for taxes, or who have paid taxes on Parcel B, within the ten years preceding the filing of this Complaint.

4. C.L. O'Neal, and wife Annie Lee O'Neal (the "O'Neals"), the Carltons, and the Tatums, were previously the owners of Parcel B. C.L. O'Neal died testate and left everything to his wife, Annie Lee O'Neal. Annie Lee O'Neal died testate in 1956 and left everything to the following persons: Mary Lee Wagner Couric, Charles O'Neal Bailey, Sara Davis Redmond, and Needham A. Graham, Jr. Needham A. Graham, Jr. died testate in 1959 and left his residuary estate to Charlotte Graham Daly.

5. Mary Lee Wagner Couric – and her heirs or devisees, if deceased; Charles O'Neal Bailey – and his heirs or devisees, if deceased; Sara Davis Redmond – and her heirs or devisees, if deceased; Charlotte Graham Daly; the Carltons – and their heirs or devisees, if deceased; and the Tatums – and their heirs or devisees, if deceased; all claim, or are reputed to claim some title to, interest in, lien, or encumbrance on Parcel B, all as more fully described below.

6. The O'Neals conveyed Parcel B to the Carltons by deed, a true copy of which is attached hereto as Exhibit D and incorporated herein by reference. That deed contains the following language:

PROVIDED, HOWEVER, That said lands are conveyed upon condition that they shall not, nor shall any part thereof, nor any building to be erected thereon, at any time be used for the conduct of any store for the sale of merchandise of any kind, or for the purpose of any trade, manufacture, or business of any description, but that it shall be used for a residence and farming purposes only, and if said grantee, his heirs, executors, administrators or assigns shall at any time conduct any store for the sale of merchandise of any kind on said premises or use the said premises or any building to be erected thereon for the purpose of any trade, manufacture or business of any description (other than farming) in violation of the terms and conditions of this deed, then this deed shall become null and void, and the title to said lands shall revert to, and the said lands shall again become the property of the grantors or their heirs and they shall have the right to re-enter and take possession of said premises, and thereafter to hold the said as if this conveyance had not been made.

(the "**Restriction Language**"), which purports to encumber the property.

7. The Carltons subsequently conveyed Parcel B to the Tatums by deed, a true copy of which is attached hereto as Exhibit E and incorporated herein by reference. This deed also contains the Restriction Language.

8. The Tatums thereafter conveyed Parcel B to Myrtle New Eddins, administratrix for the Estate of B.C. Eddins, deceased, ("**Eddins**") by deed, a true copy of which is attached hereto as Exhibit F and incorporated herein by reference. This deed contains the Restriction Language as well.

9. All instruments of conveyance subsequent to the deeds described herein above make reference to the existence of the Restriction Language set forth in the deed from Tatum to Eddins, but do not contain the Restriction Language as part of the deeds themselves.

10. The Restriction Language appears to create the estate of a fee simple defeasible. Plaintiffs are informed and believe, however, that the circumstances surrounding the inclusion of the Restriction Language in the original deeds indicate that the O'Neals, the Carltons, and the Tatums intended to create only a covenant with respect to the use of the property, and not to create an estate of fee simple defeasible.

11. Since the O'Neals, the Carltons, and the Tatums were the beneficiaries of the covenant, Mary Lee Wagner Couric – and her heirs or devisees, if deceased; Charles O'Neal Bailey – and his heirs or devisees, if deceased; Sara Davis Redmond – and her heirs or devisees, if

deceased; Charlotte Graham Daly; the Carltons – and their heirs or devisees, if deceased; and the Tatums – and their heirs or devisees, if deceased; are all proper defendants to this action.

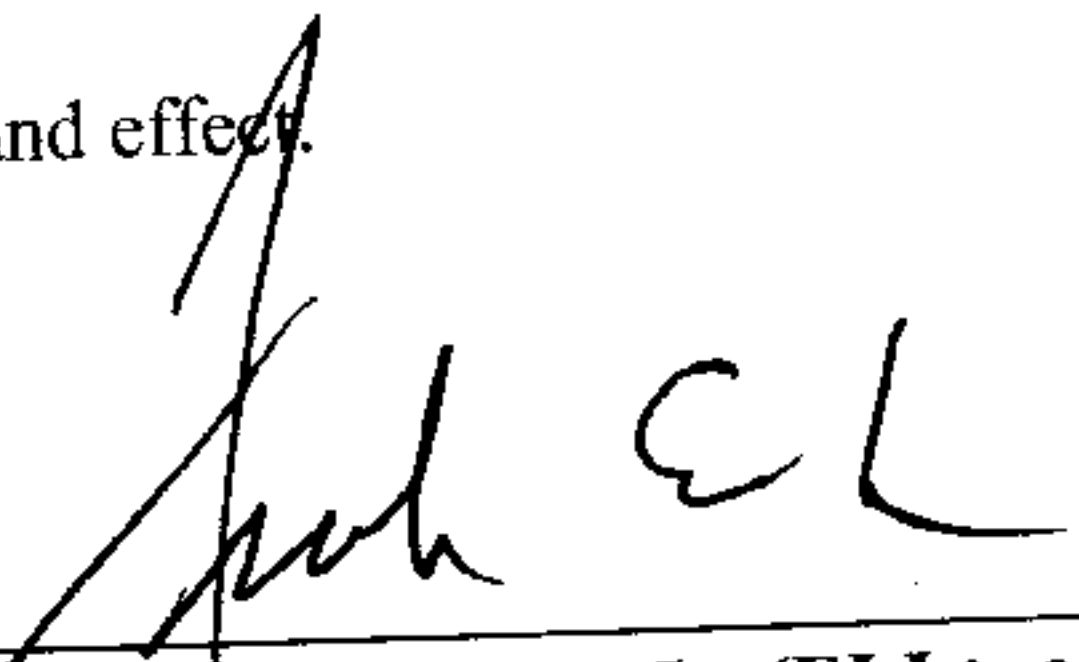
12. The ages, conditions, and residences of Mary Lee Wagner Couric – and her heirs or devisees, if deceased; Charles O'Neal Bailey – and his heirs or devisees, if deceased; Sara Davis Redmond – and her heirs or devisees, if deceased; the Carltons – and their heirs or devisees, if deceased; and the Tatums – and their heirs or devisees, if deceased; are unknown to Plaintiffs, and cannot be ascertained by them after reasonable and diligent effort, including searching the Greater Shelby County, AL Phone Book, the Shelby County, Alabama City Directory, and the Shelby County Probate records.

13. It is contemplated by the Plaintiffs that Parcel A (which surrounds Parcel B) will be developed into a large distribution center. The land immediately to the west of Parcel A is currently being used for commercial purposes by Alabama Power Company as its general service complex. The land in the general vicinity of Parcel A is used by several other parties for distribution centers and warehouses.

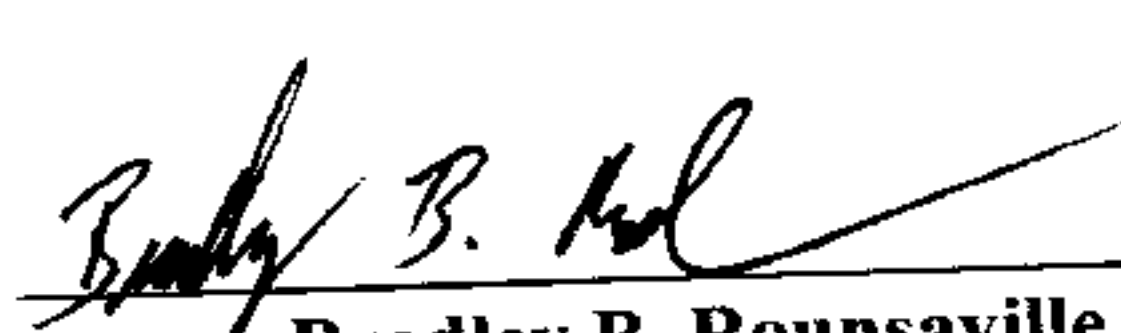
14. Because of the foregoing, the character of the area surrounding Parcel A and Parcel B has changed so drastically and completely that the original purpose of the restriction on use of the property embodied in the Restriction Language can no longer be accomplished, and the Restriction Language should no longer be enforced.

15. The restriction embodied in the Restriction Language should no longer be enforced because such enforcement would greatly harm the Plaintiffs without conferring any benefit on Defendants or any other landowner.

16. By virtue of the foregoing, there exists a cloud on Plaintiffs' title and an actual controversy between Plaintiffs and Defendants upon which substantial property rights depend. Pursuant to § 6-6-560 *et seq.* and § 6-6-220, *et seq.*, of the Code of Alabama, 1975, Plaintiff desire to establish by appropriate order of this court that Plaintiffs are the owner in fee simple absolute of Parcel B free and clear of the purported restriction created by the Restriction Language and that the Restriction Language is void and of no further force and effect.



Frank C. Ellis, Jr. (ELL002)
Wallace, Ellis, Fowler & Head
111 North Main Street
Post Office Box 587
Columbiana, AL 35051
(205) 669-6783



Bradley B. Rounsaville (ROU011)
Bradley Arant Rose & White LLP
2001 Park Place, Suite 1400
Birmingham, Alabama 35203-2736
(205) 521-8000

Attorneys for Plaintiffs

EXHIBIT A

All that parcel of land bounded by and enclosed within the following described lines, Viz:; Commence on the section line at a point Nine Hundred and Seventy-Eight (978) feet north of the northwest corner of Section 33, township 21, Range 2 West; thence north along the section line two hundred and ten (210) feet to a wire fence and stake; thence west sixteen (16) degrees south eight hundred and twenty-five (825) feet to the right-of-way of the L. & N. Railroad; thence south along the eastern boundary line of said right-of-way of L. & N. Railroad two hundred and ten (210) feet to a stake; thence east sixteen (16) degrees north eight hundred and twenty-five (825) feet to section line and starting point, containing four (4) acres, more or less, situated in the northern part of the southeast quarter of the southeast quarter (S.E. $\frac{1}{4}$ of S.E. $\frac{1}{4}$) of Section twenty-nine, township twenty-one (21) range two (2) west.

Inst # 2000-18613

06/06/2000-18613
09:56 AM CERTIFIED
SHELBY COUNTY JUDGE OF PROBATE
007 MMS 23.50