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Shelby Cnty Judge of Probate,AL
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STATE OF ALABAMA)
 :
 JEFFERSON COUNTY)

This instrument prepared by
Frank C. Galloway III
Galloway & Somerville, LLC
11 Oak Street
Birmingham, AL 35213

**IN THE PROBATE COURT OF
SHELBY COUNTY, ALABAMA**

NOTICE OF LIS PENDENS

Notice is hereby given that on the 6th day of January, 2006, suit was begun by the undersigned in the Circuit Court of Shelby County, Alabama, Case No. CV 06-____, and that the following are the names of all of the parties to said suit:

**IN THE CIRCUIT COURT OF
SHELBY COUNTY, ALABAMA**

JAMES A. McMILLAN and his wife,)
ELIZABETH K. McMILLAN,)
)
Plaintiffs,)

V.

WEATHERLY DEVELOPMENT
COMPANY, INC., SALIBA SHUNNARA
and his wife, NADIA S. SHUNNARA,
KENNETH W. BETTINI and his wife,
SHIRLEY W. BETTINI, PYRAMID
CUSTOM HOMES, LLC, UNION
PLANTERS BANK, N.A. and FICTITIOUS
DEFENDANTS B, C, D, E, F, G, and H,

Defendants.

Case No. CV

NOTICE OF LIS PENDENS

Notice is hereby given that on the 6th day of January 2006, plaintiffs James A. McMillan and his wife, Elizabeth K. McMillan, (referred to hereinafter as “Plaintiffs”) filed a complaint in the Circuit Court of Shelby County, Alabama, (the “Complaint”) against defendants Weatherly Development Company, Inc., Saliba Shunnara and his wife, Nadia S. Shunnara, Kenneth W. Bettini and his wife, Shirley W. Bettini, Pyramid Custom Homes, LLC, and Fictitious Defendants

A, B, C, D, E, F, G, and H. Fictitious Defendant A was substituted by Union Planters Bank, N.A. d/b/a Regions Mortgage by amendment on January 9, 2006. (All defendants are collectively referred to hereinafter as "Defendants"). No case number has yet been assigned. Therefore, anyone reading this notice should then review the records of the Circuit Court of Shelby County, Alabama to locate the to-be-determined file number. In the Complaint, Plaintiffs allege among other things, the following:

1. Plaintiffs are owners of the following described real property located in Shelby County, Alabama:

Lot 6, according to the Survey of Weatherly Windsor – Sector 9, as recorded in Map Book 17, Page 125 in the Office of the Judge of Probate of Shelby County, Alabama.¹ ("Lot 6")

2. Defendants Saliba Shunnara and his wife, Nadia S. Shunnara, (the "Shunnaras") own the equitable right of redemption to certain Shelby County, Alabama real property adjoining Lot 6, and which is more particularly described as:

Lot 7, according to the Survey of Weatherly Windsor – Sector 9, as recorded in Map Book 17, Page 125 in the Office of the Judge of Probate of Shelby County, Alabama ("Lot 7").

3. Defendant Kenneth Bettini ("Bettini") owned Lot 7 immediately prior to the Shunnaras owning same.

4. Defendant Pyramid Custom Homes, LLC ("Pyramid") has and continues to effect the construction of a new home on Lot 7 as an agent and representative of the Shunnaras and

¹ The Office of the Judge of Probate of Shelby County, Alabama is henceforth referred to as the "Probate Office".

Union Planters Bank, N.A. d/b/a Regions Mortgage ("Union Planters"). Pyramid has, in such capacity, effected the wrongful activity on Lot 6 referenced herein.

5. On or about December 30, 1993, Weatherly conveyed Lot 7 to Kenneth W. Bettini by the instrument recorded in the Probate Office as instrument number 1994-00033 (the "Bettini Deed"). The Bettini Deed wrongfully purported to convey to Bettini an easement over part of Lot 6.

6. On or about August 8, 1994, an untitled instrument, purportedly signed on August 1, 1994 by Greg Gilbert as president of Weatherly (the "Instrument") was recorded in the Probate Office as instrument number 1994-24615. The Instrument, which is not ambiguous on its face, states that the grantee, Bettini, conveyed an easement over a part of Lot 6 to Weatherly.

7. On or about September 2, 1994, Weatherly conveyed Lot 6 to Plaintiffs by the instrument recorded in the Probate Office as instrument number 1994-30891.

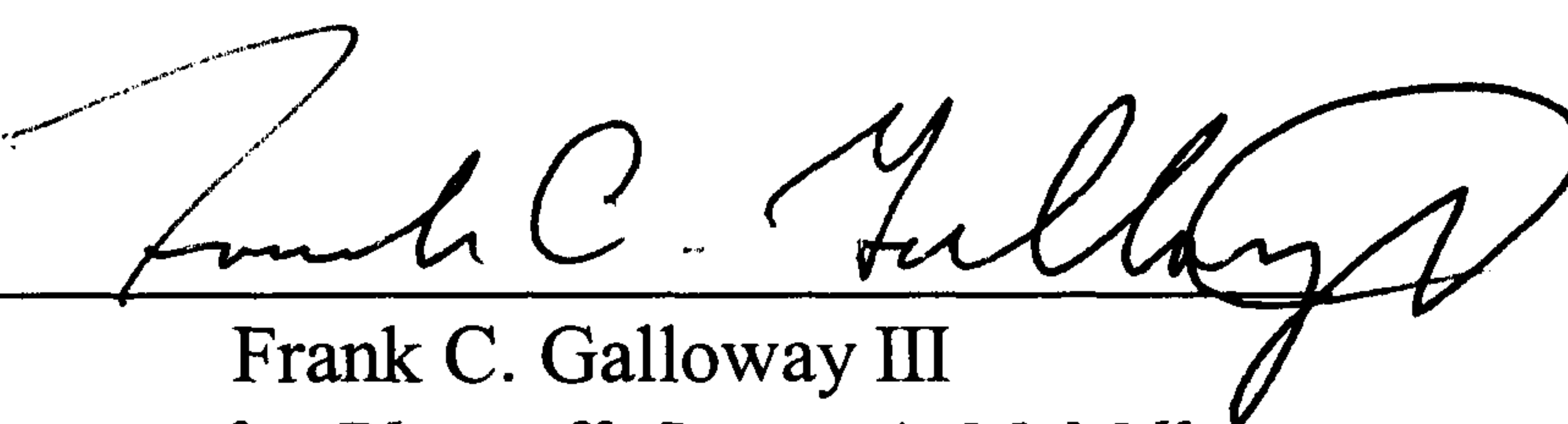
8. On or about June 30, 2003, the Bettinis conveyed Lot 7 to the Shunnaras by instrument recorded in the Probate Office as instrument number 20030715000446110 (the "Shunnara Deed"). Additionally, Bettini wrongfully attempted to convey an easement over a portion of Lot 6 to the Shunnaras as part of this conveyance.

9. Based on the erroneous claims for an easement all of the Defendants have acted so as to effect a wrongful intrusion onto Lot 6. Such wrongful intrusion has been done by clearing and grading portions of Lot 6, including but not limited to, the wrongful cutting of trees thereon. Such activity occurred in or around June of 2005. The occurrence of this activity was the first occasion on which Plaintiffs knew that any of the Defendants claimed to have any claim of right (albeit a misguided and erroneous claim) over a portion of Lot 6. The Defendants presently continue to occupy and use such portion of Lot 6.

10. The Defendants erroneously claim that Lot 6 is burdened by an easement referenced in the Bettini Deed and/or the Shunnara Deed. Plaintiffs refute such contention and thus have a justiciable conflict with the Defendants regarding same.

11. Plaintiffs have filed claim for declaratory judgment that no easement over Lot 6 exists in favor of any Defendant or any owner of Lot 7. Alternatively, plaintiffs seek a declaratory judgment so as to establish the existence vel non of the easement and the scope thereof, should it be deemed to exist.

Done this 9th day of January, 2006.


Frank C. Galloway III
*Attorney for Plaintiff James A. McMillan
Elizabeth K. McMillan*

OF COUNSEL:

GALLOWAY & SOMERVILLE, LLC
11 Oak Street
Birmingham, AL 35213
Telephone: (205) 871-2183
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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served on:

Weatherly Development Company, Inc.
c/o Betty S. Gilbert
3656 Cahaba Beach Road
Birmingham, AL 35242

Saliba Shunnara
129 Windsor Circle
Pelham, AL 35124

Nadia S. Shunnara
129 Windsor Circle
Pelham, AL 35124

Kenneth Bettini
124 Kings Crest Lane
Pelham, AL 35124

Shirley W. Bettini
124 Kings Crest Lane
Pelham, AL 35124

Pyramid Custom Homes, LLC
c/o Nathan Atchley
1106 Thompson Road
Alabaster, AL 35007

Union Planters Bank, N.A.
d/b/a Regions Mortgage
P. O. Box 18001
Hattiesburg, MS 39404-8001

via first class mail this 9th day of January, 2006.


OF COUNSEL