

## IN THE CIRCUIT COURT FOR SHELBY COUNTY, ALABAMA

NATIONAL BANK OF COMMERCE, N/K/A )  
 FIRST AMERICAN BANK, and RICHARD )  
 E. RUSHING, )

Plaintiffs, )

v. )

WALTER C. ANDERTON & THE )  
 ANDERTON FAMILY TRUST )

Defendants. )

CV No.: 07-900246

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 MARY H. HARRIS

NOV 02 2007

CIRCUIT & DISTRICT  
 COURT CLERK  
 SHELBY CO.

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 AGREED CONSENT JUDGMENT AND ORDER
 

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WHEREAS this matter came before this Court upon plaintiffs National Bank of Commerce, N/K/A First American Bank, and Richard E. Rushings' (hereinafter "Plaintiffs") Complaint for Declaratory Judgment and Injunctive Relief in CV-07-900246; and

WHEREAS all defendants named herein have been served, filed an Answer, and/or have consented to this Court's jurisdiction; and


WHEREAS Plaintiffs filed a Motion for Summary Judgment in the above styled case; and

WHEREAS, the Parties have reached an agreement as to the nature and extent of the property in question that is the subject of the Complaint CV-07-900246; and

WHEREAS, the Parties have mutually agreed to the following facts:

1. Plaintiff Richard E. Rushing is the owner of that certain real property situated Shelby County, Alabama, more particularly described as follows:

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 Shelby Cnty Judge of Probate, AL  
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Part of the NW 1/4 of the NW 1/4 of Section 5, Township 20 South, Range 3 West, Shelby County, more particularly described as follows:

Begin at the Northwest corner of said section and proceed south along west line of said forty to point 761.58 feet which is also the point of intersection with the south boundary of road right of way, this point, also being called the point of beginning; thence turn left 57°18' for a distance of 197 feet; thence turn left 90° for a distance of 215.99 feet; thence turn left again 90° for a distance of 197 feet to a point of intersection with highway right of way; thence turn left and travel westerly along said right of way to the point of beginning.

Situated in Shelby County, Alabama.

(hereinafter, the "Property").

2. Plaintiff First American Bank has an interest in the Property pursuant to a mortgage given by Richard E. Rushing, Sr. and his wife, Sonja A. Rushing, dated February 4, 1998 and recorded as instrument 1998-09413 in the Office of the Judge of Probate of Shelby County, Alabama (hereinafter the "Probate Office") on March 18, 1998.

3. Richard E. Rushing, Sr. obtained title to the Property pursuant to a warranty deed given by Selby K. Rushing Sr., and his wife, Edith M. Rushing, dated March 7, 1977, and recorded in Book 304, Page 110 in the Probate Office on March 8, 1977.

4. Selby K. Rushing, Sr. and his wife Edith M. Rushing obtained title to the Property pursuant to a general warranty deed given by S. Robert Wright, and his wife, Audrey Wright, dated December 23<sup>rd</sup>, 1949, and recorded in Book 140, Page 39 in the Probate Office on or about December 23, 1949.

5. Selby K. Rushing, Sr. and his wife, Edith M. Rushing, granted a fifty (50) foot "right of way" easement across the western corner of the Property to Walter Anderton, John Yauger, S.K.





Rushing and his wife, Edith Mr. Rushing, their heirs, assigns, executors, and administrators forever dated April 17, 1967, and recorded in Book 247, Page 773 in the Probate Office on April 21, 1976 (the "Easement").

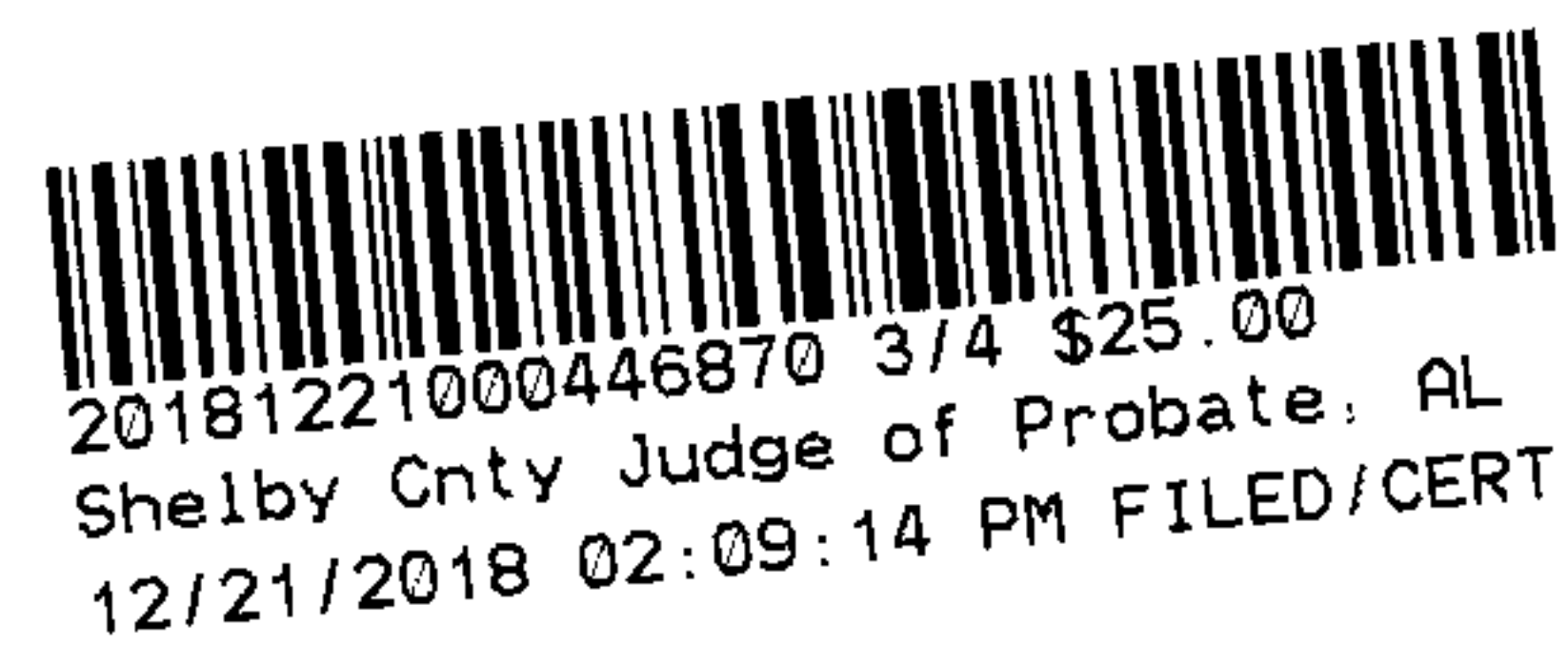
6. On or about September 30<sup>th</sup>, 1993, the devisees of the Estate of Edith Mae Rushing, and as devisees of the Estate of Selby K. Rushing, Sr, conveyed the Northwest Quarter of the Northwest Quarter of Section 5, Township 20 South, Range 3 West to ABM developers, an Alabama General Partnership, less and except the Property, described as follows, to-wit:

Begin at the Northwest corner of said Section and proceed South along West line of said forty to point 761.58 feet which is also the point of intersection with the South boundary of road right of way, this point also being called the point of beginning; thence turn left 57 degrees 18 minutes for a distance of 197 feet; thence turn left 90 degrees for a distance of 215.99 feet; thence turn left again 90 degrees for a distance of 197 feet to a point of intersection with highway right of way; thence turn left and travel Westerly along the said right of way to the point of beginning.

Such conveyance, by General Warranty Deed, was recorded in the in the Probate Office as instrument 1993-30765 on or about October 06, 1993.

7. On or about September 9, 1994, ABM developers executed a "Deed of Merger" purporting to convey the real property holdings of ABM Developers, an Alabama General Partnership, to its survivor by merger, ABM Developers, LLC. Such "Deed of Merger" was recorded in the in the Probate Office as instrument 1994-28530 on or about September 19, 1994.

8. On April 4, 1997, ABM Developers, LLC purported to convey the property described in the Easement by quitclaim deed to the Anderton Family Trust. Such quitclaim deed was recorded in the Probate Office as instrument 1997-11350 on or about April 14, 1997.



9. Defendants Anderton Family Trust and Walter Anderton agree and consent that the probate records pertaining to the Property are true, correct, and valid.

Based on the foregoing agreed findings of fact, its is hereby **ORDERED, ADJUDGED AND DECREED**, upon agreement of the Parties named and identified in CV-07-900246 as follows:

10. Neither Defendant Walter Anderton nor Defendant Anderton Family Trust has a fee simple interest in the Property or in any portion thereof. Rather, Defendant Anderton Family Trust possess only those rights granted by the Easement to the extent the Property is burdened by the Easement.

11. Plaintiffs and Defendant Anderton Family Trust, their heirs, assigns, executors, and administrators forever, enjoy a mutual "right of way" easement on the property described in the Easement as granted by their respective predecessors-in-interest and recorded in Book 247, Page 773 in the Probate Office on April 21, 1976.

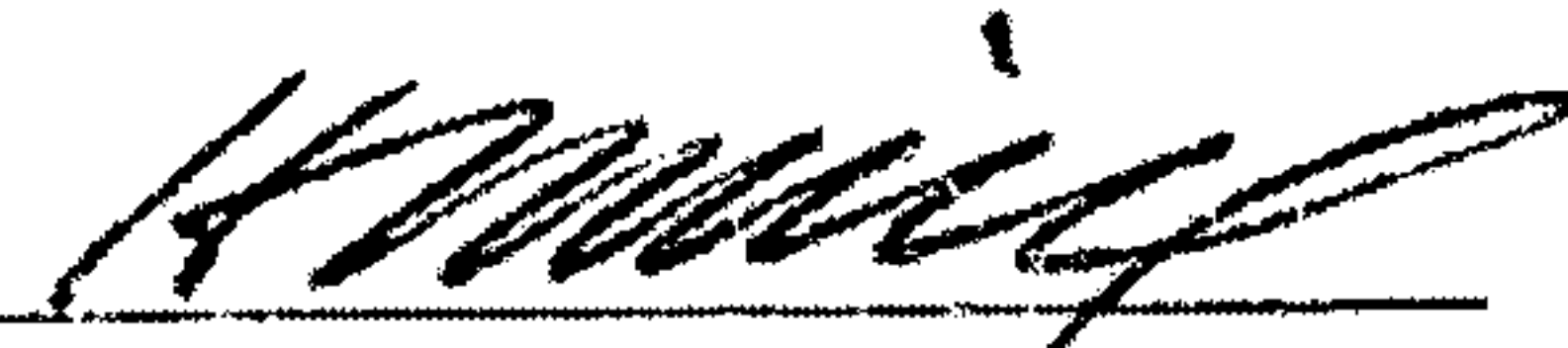
12. Costs of Court are taxed as paid.

It is further **ORDERED, ADJUDGED AND DECREED** by the Court that a certified copy of this decree be recorded in the Office fo the Judge of Probate of Shelby County, Alabama, and that it be indexed in the name of the parties in both the direct index and indirect index of the records thereof.

Done this 27<sup>th</sup> day of September, 2007.



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Shelby Cnty Judge of Probate, AL  
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Hewitt L. ("Sonny") Conwill  
Circuit **Certified a true and correct copy**

Date: 12/21/18

  
Mary H. Harris, Circuit Clerk  
Shelby County, Alabama