



November 17, 2023

**VIA EMAIL ONLY**

Jerrold Crouter, Esquire  
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**RE: Timothy L. Harrington, in his capacity as Trustee of the GFG 401k Trust v. S.R. Griffin Construction, Inc.**

Dear Jerry:

Thank you for agreeing to mediate this action. Mediation is scheduled to take place via Zoom on Monday, November 20, 2023, beginning at 1:00 p.m. I trust you will provide the Zoom invitation.

The Lincoln County Superior Court action involves the allegations of Plaintiff Timothy Harrington, in his capacity as Trustee for GFG 401K Trust (“GFG”), that Defendant S. R. Griffin Construction, Inc.’s (“SRGCI”) heavy equipment entered onto GFG’s posted property, circled a “Legacy Oak Tree,” caused ruts on GFG’s land, and damaged the tree’s root system, “hastening its demise.” GFG also alleges that SRGCI allowed and directed employees of Maine Drilling & Blasting to park vehicles on GFG’s posted property.

SRGCI denies that its actions, or those of MDB, caused any damages. Mr. Harrington has no evidence to support his alleged damages.

Please accept the following as SRGCI’s Mediation Memorandum.

**I. FACTUAL BACKGROUND**

Mr. Harrington is 54 years old. He has never been married and has no children. He lives alone at his residence at 9 River Run Road in Edgecomb. He makes guitars and ukuleles and operates a sawmill. Prior to that, he worked as a maritime engineer for over twenty years. He no longer works in that field but served as an instructor for cadets with the Maine Maritime Academy on a vessel in May or June of 2023.

Mr. Harrington formed GFG in 2015. He is the trustee and beneficiary of GFG. There is a residence on GFG’s property in Edgecomb, which GFG rents out through AirBnB.

Scott Griffin is the president and owner of SRGCI, which, including Mr. Griffin, has five employees. SRGCI has performed municipal, commercial and residential construction in Lincoln County for several decades. Primarily, SRGCI performs excavation, concrete work and plowing.

Separately, Mr. Griffin is the road commissioner for the Town of Edgecomb. As road commissioner, he is responsible for maintaining town roads and culverts. SRGCI plows for Edgecomb.

In 2013-2014, SRGCI engaged in road improvement work in Edgecomb. The roadwork included improvements to a now discontinued road, Merry Island Road, which is a very narrow road, measuring only approximately sixteen feet in width, with utility poles along the righthand side of the road. There was an existing turnaround at the end of Merry Island Road, with utility poles beyond the turnaround that service providers might need to access in the event of power outages. SRGCI planned out the improvements with the Town and communicated extensively with Merry Island Road residents to make sure the road remained open during the project. SRGCI improved the turnaround by adding gravel. The purpose was twofold: to immediately improve the turnaround for equipment and vehicles involved in the Merry Island Road improvement, and for the future needs of emergency and utility vehicles. SRGCI then paved Merry Island Road.

In September of 2014, GFG purchased approximately ninety acres of land that abuts Merry Island Road and which may include the turnaround. There is a large oak tree located within the turnaround, five to six feet from the edge of it. SRGCI placed gravel behind the tree during the 2013-2014 improvement project.

Non-party Alan Whitman owns land that abuts Merry Island Road. Mr. Whitman's wife is wheelchair bound and Mr. Whitman wanted to build her a house near the water. Mr. Whitman entered into discussions with SRGCI to build a home on the land. To perform the work, SRGCI needed to clear trees, lay a temporary access road, and blast. The temporary access road ran along another discontinued road, Mount Hunger Road. Mr. Whitman's property ran along one side of Mount Hunger Road. Another landowner, Kathleen Helm, owned land on the other side of Mount Hunger Road. Ms. Helm consented to SRGCI's roadwork.

The Town approved and permitted the work. SRGCI cleared trees on Mr. Whitman property. At that point, SRGCI needed to blast, with access via Merry Island Road. Mr. Whitman contracted with non-party Maine Drilling & Blasting ("MDB") to do the work and secured approval from the Town's Planning Board for the blasting work. MDB notified abutting property owners of its intent to blast.

Mr. Harrington, on behalf of GFG, then began to take steps to stop the blasting. A few days before MDB was to blast, Mr. Harrington parked old vehicles very close to his lot line, roughly 50 feet from the blasting area, and loaded them with old fuel cans and Roundup. MDB expressed concern and chose to bring in six or seven more blasting mats, in addition to the six or seven already on site, to increase safety and the risk of damage to Mr. Harrington's vehicles. MDB's truck needed to use the Merry Island Road turnaround to bring in the additional mats. Mr. Harrington moved a one-ton dump truck onto the Merry Island Road turnaround, which prevented MDB or anyone else from using it. Because it could not bring in the additional mats, MDB refined its blasting protocol to do it more slowly, over a period of three-four days.

During the project, MDB used the turnaround once, when a driver backed an empty truck into the turnaround to drive it out forward. Similarly, SRGCI used the turnaround once, after it delivered equipment to the site, to turn around its empty truck and trailer. SRGCI denies any use of the turnaround beyond that singular occasion, on the first day of the project.

Mr. Harrington has never spoken with Mr. Griffin or SRGCI about any issues with the project; he admits he never had any any unpleasant interactions with Mr. Griffin before August of 2022.

Mr. Harrington's emails and text messages to Town officials make clear that he has been opposed to Mr. Whitman's home construction project from the start. The project is presently on hold; Mr. Whitman does not want to deal with Mr. Harrington.<sup>1</sup>

## **II. LIABILITY AND DAMAGES**

GFG's Third Amended Complaint alleges one count of common law trespass, including that SRGCI's conduct was motivated by actual malice, such that GFG seeks the recovery of punitive damages. GFG also alleges a statutory trespass count pursuant to 14 M.R.S. § 7551-B<sup>2</sup>, alleging SRGCI is liable to GFG for two times GFG's actual damages, plus other recoverable sums. GFG further alleges a statutory trespass count pursuant to 14 M.R.S. § 7552.<sup>3</sup> Finally, GFG alleges a SRGCI's negligence.

SRGCI denies that either SRGCI or MDB harmed the oak tree within the turnaround when they each used the turnaround, once, during their work for Mr. Whitman in 2022.

The liability analysis has two areas of focus. First, whether SRGCI had a right to use the Merry Island Road and its turnaround, or whether it trespassed on GFG's property. Second, whether the actions of SRGCI caused any damage to GFG's property.

As to the first question, Mr. Griffin believed SRGCI had the right, through and from the Town, to use Merry Island Road and its turnaround. Even if that belief was wrong, there is no

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<sup>1</sup> Mr. Harrington has previously been involved in litigation against an apartment complex and the Town of League City, Texas over a neighboring dog park. Mr. Harrington did not like residing next to the dog park because of the noise and the mess. Mr. Harrington deliberately played his electric guitar loudly to cause problems for the dogs. On another occasion, he used a machine to emit a high-pitched noise that hurt dogs' ears. Other documentation associated with that case indicates that Mr. Harrington repeatedly called authorities and complained, so much so that he received citations from police. In one email from that action, Mr. Harrington told a police official that he put rat poison on his property and was "not responsible if a dog eats a dead mouse or rat and gets poisoned."

<sup>2</sup> 14 M.R.S. § 7551-B alleges, in relevant part, that a person who intentionally enters the land of another without permission and causes damage to property is liable to the owner in a civil action if the person damages any road or does other damage to any "structure" on property not that person's own. If the damage is caused intentionally, the person is liable to the owner for two times the actual damages, plus any additional costs. The owner's damages may be measured either by the replacement value of the damaged property or by the cost of repairing the damaged property. I doubt that a tree can be considered a "structure" under the statute.

<sup>3</sup> 14 M.R.S. § 7552 provides that, without the permission of the owner, a person may not destroy or damage any forest product or property of any kind. When forest products have been destroyed the owner may recover either the value of the lost products themselves or the diminution in value of the real estate that results from the violation, whichever is greater. For lost trees, the owner may choose to claim the market value of the lost trees; the diminution in value of the real estate; or the forfeiture amounts listed in 17 M.R.S. §2510 (\$150 per tree greater than 22 inches diameter). If GFG recovers under 14 M.R.S. §7551-B, it is barred by statute from recovery under 14 M.R.S. §7552.

meaningful evidence that SRGCI deliberately trespassed with malice.<sup>4</sup> More importantly, there is no evidence that trespass, if any, caused any damages to GFG.

Mr. Harrington testified the property damage occurred in August of 2022. According to Mr. Harrington, the damage caused by SRGCI consisted of rutted land, including ruts close to trees, most notably the “legacy oak tree.” Mr. Harrington testified on 5-10 occasions, he witnessed heavy trucks owned by SRGCI, or acting at the direction of SRGCI, drive or park in the area surrounding the legacy oak tree.

Mr. Harrington refers to the subject tree as a “legacy oak tree” but acknowledges it has not been so designated by anyone else. Mr. Harrington has not produced any pictures of the tree taken before August of 2022. At deposition, Mr. Harrington testified only that he assumed that the tree -- which remains alive at the property -- was damaged based on SRGCI’s tri-axle dump trucks and heavy equipment being parked and operated in the area immediately surrounding the tree. Mr. Harrington testified he was not qualified to observe damage to the tree and needed to rely upon experts.<sup>5</sup> I showed Mr. Harrington a few photos of the tree. He was unable to say whether the photos showed any damage from August of 2022.

In short, Mr. Harrington has absolutely no evidence of damage to the oak tree. He is simply assuming that the operation of heavy equipment in the area damaged the tree. Remarkably, Mr. Harrington concedes that nobody -- not even his designated experts -- has ever even told him that: (1) the tree was damaged; (2) the damage required remedial work; or (3) the damage is of a degree that requires the tree to be removed. As Mr. Harrington explained, he has only asked his experts about the costs to remove the tree and plant a new, comparable tree.

Mr. Harrington has not had any work performed on his property to fix or remedy any claimed damage by SRGCI. Mr. Harrington testified he received estimates for such remedial work and provided those to his counsel, but none of that has yet been provided to SRGCI.

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<sup>4</sup> Mr. Harrington provided the following reasons as to why he believes SRGCI trespassed knowingly and acted with malice: (1) the property in question was posted; (2) an intoxicated person, allegedly employed by SRGCI, called him at night, repeated the phrase “white truck” and asked “how are we doing?”; (3) he discovered a tree limb jammed in the grill of the dump truck he parked to block the turnaround and legacy oak tree, although he does not know who did this; (4) he discovered damage to the side of his dump truck door, but does not know who was responsible for the damage; (5) he discovered the spout to one of his gas tanks ripped off, but he does not know who did this; (6) he discovered a “spite rock” blocking one of the old roads that runs through the woods in that area, but he does not know who did this; and (7) unknown people drove by his house on River Run Road and honked their horns. None of this “evidence” supports a punitive damages award; indeed, SRGCI long ago did work for Mr. Harrington, and he admits he had never had any unpleasant interaction with SRGCI before August 2022.

<sup>5</sup> GFG designated three experts. The designation of John Drake, the co-owner of 5 Stones Landscaping and Restorations, provides that he is expected to testify about the current condition of the tree, the required work and cost to purchase, plant and care for a suitable replacement, and the impact of SRGCI’s actions on the tree and property. The designation of Scott Dugas, owner of Scott Dugas Trucking & Excavating, provides that he is expected to testify that SRGCI breached its duty of care and caused damages to GFG. The designation of Jaime Haskins, an arborist from Thomaston, provides he will testify about the cost to remove the legacy oak tree and repair the property.

Mr. Harrington has also not paid any money, nor has he received any estimates, for costs to fix any of the roads in that area. Mr. Harrington could not identify any instances, outside of litigation expenses, where he has spent money because of SRGCI's actions.

In short, Mr. Harrington is unable to prove any damages, beyond some ruts.

#### **IV. SETTLEMENT STATUS**

S.R. Griffin carries \$1 million in applicable liability coverage through a commercial general liability policy with Acadia Insurance. Erin Brady is managing the defense of the action on behalf of Acadia.

Before Mr. Harrington was deposed, GFG demanded \$150,000 to settle the action (including \$25,000 for punitive damages). Acadia did not respond to the demand.

Based on Mr. Harrington's deposition and the state of the evidence, including especially as to damages, the \$150,000 demand is very clearly not a serious proposal.

Erin and I look forward to working in good faith with you and Fred to determine if this action can be resolved, mindful of the excellent framework that exists to defend this case.

Very truly yours,

*/s/ Jonathan R. Liberman*

Jonathan R. Liberman

cc: Fred Bopp, Esquire  
Erin Brady, Claim No. 52PC245605