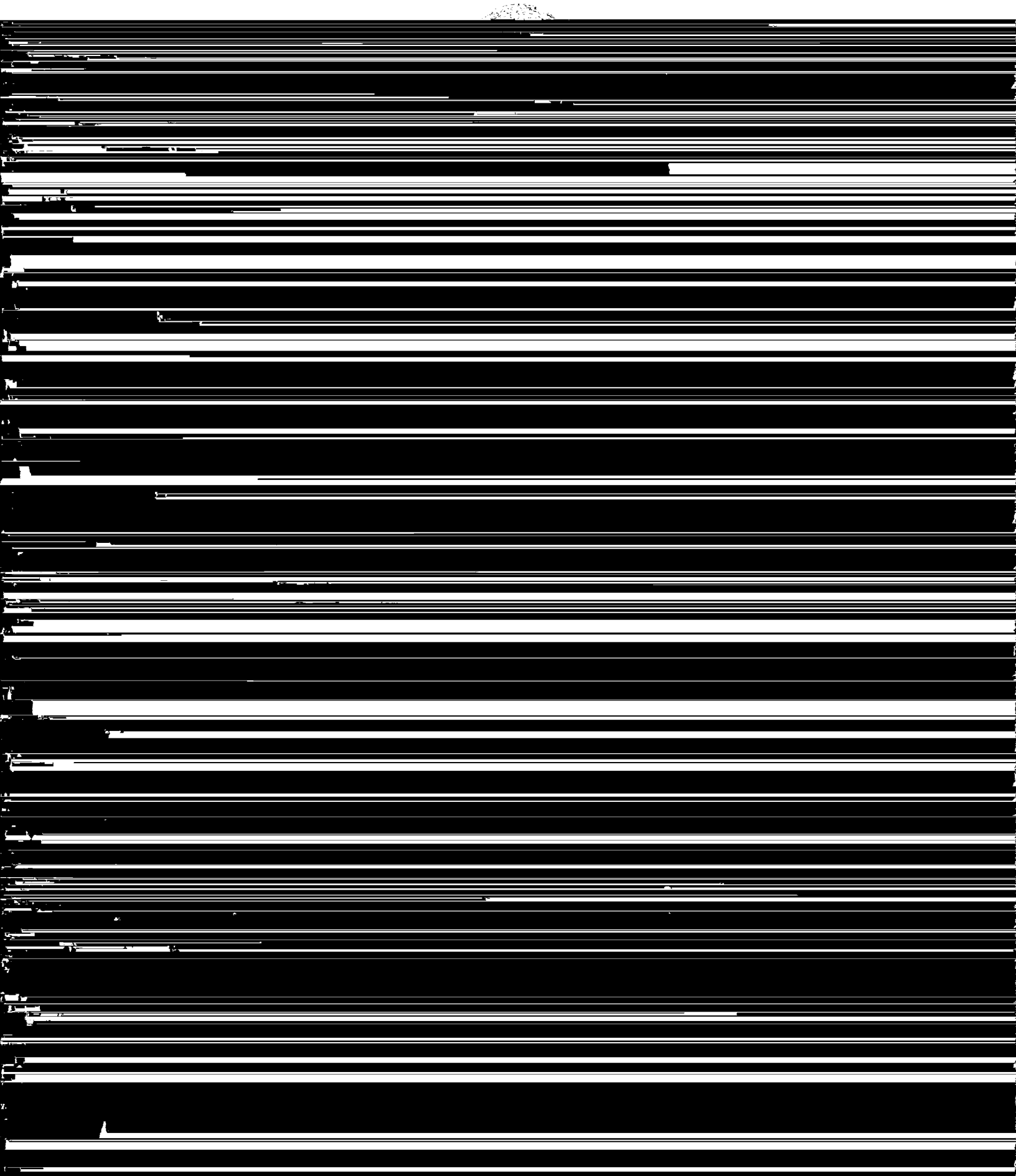
Twentieth Judicial Circuit of Virginia



The Defendant operates a commercial ferry across the Potomac River between Virginia and Maryland. The allegations forming the basis of this action stem from the Defendant's presence on a Virginia parcel called "Rockland." For decades and presently, the Defendant has used the real property at issue as the Virginia landing for its ferry operation and for access thereto and therefrom. The Plaintiffs and the Defendant do not agree what areas of this parcel the Defendant may lawfully occupy. The Defendant takes the position that, notwithstanding the Plaintiffs' ownership of Rockland, the presence of the business and its customers on the property and use thereof is lawful.

The instant complaint was filed on July 2, 2009 in CL56672-00 against White's Ferry and two individual defendants. Responsive pleadings were filed on July 6, 2010 but no other

worked to devote due time and attention to this matter. In reaching its decisions herein, the Court has reviewed and weighed the exhibits and the testimony of the witnesses admitted to evidence.

River. The Defendant's position is that Route 655 ends where a public landing begins. The Plaintiffs' position is that Route 655, as it heads toward the Potomac River, ends at a sign displaying the words "End of State Maintenance." This sign is located at the end of the last

The Defendant concedes in the stipulations that the operation of the Virginia landing

Before considering the substance of the defenses, the Court will address the Plaintiffs' challenge against the propriety of interposing a defense in this litigation. The Plaintiffs assert that the Defendant should be estopped from attempting to challenge Plaintiffs' title. The Plaintiffs argue that the License Agreement was "essentially a settlement agreement that ... was expressly intended to 'properly resolve' any 'questions'," including the instant one, about the Defendant's right to use the Property. See Plaintiffs' First Closing Argument at 45.

The Court assumes *arguendo*, for purposes of the ensuing analysis, that the License

construction, the law "must afford a reasonable degree of certainty so that a person is not left to guess at what conduct is prohibited." Turner v. Jackson, 14 Va. App. 423, 433 (1992) (citing Broadrick v. Oklahoma, 413 U.S. 601, 607 (1973)).

Given these interpretations of the standard, it is apparent that, to meet its burden on its

to establish with reasonable certainty the location of the taking in the 1871 Road Case, so the Court can then evaluate how, if at all, any public right-of-way corresponds with the real property

condemnation having been adjudicated in the 1871 Order. See Jeter v. Board, 68 Va. 910, 916-17 (1876). The lack of a map or diagram, however, obviously hinders the Defendant's ability to

[redacted]

Further, reasonable certainty would entail knowing, at a minimum, what the dimensions and shape of such landing are. Only then would the reasonable certainty of location be possible because general geographic location alone is insufficient to satisfy the burden of proof for the

was condemned by the 1871 Order covers an area of 7,350.75 square feet. Whether the small discrepancy is merely a product of rounding, or because an unspecified additional 54.25 square

In addition to the analysis of the 1871 Order on a more technical level, as described in the

The Court observed that even if, in this exercise, there emerged a potential orientation of

[redacted]

testified about, the Defendant's expert witnesses testified generally that they do not know the location of the areas of real property that were condemned by the 1871 Order.

One of the expert witnesses, Bruce Robertson, was presented with various maps and was asked to identify certain features thereon. His testimony was taken only as evidence of what is

Dake testified that, to his knowledge, there is no court case or record that has relocated White's Ferry since 1871. The fact that there is no court order or record changing the location

finds that facts necessary to the instant litigation regarding the location of the easement have not been proven.[5]

The Defendant's second line of defense is anchored to the Byrd Act of 1932. The

transfer the responsibility for maintaining certain public roads and landings from counties to the state. See Mulford v. Walnut Hill Farm Group, 282 Va. 98, 108 n.7 (2011) (citing Godwin v.

First is the Defendant's argument regarding the "End of State Maintenance" sign, wherein it takes the position that the sign does not establish the end of a public right of way. In support of that position, the Defendant cites to Board of Supervisors v. Ripper. 790 F.Supp. 632, 636 (W.D. Va. 1992) ("mere non-maintenance or non-use is not sufficient to extinguish a road as

The second letter offers comments on the Defendant's construction proposals. See Plaintiff's Exhibit 11. The letter "recommends" that Defendant erect four signs, but does not mandate their installation, and certainly does not rise to the level of VDOT taking the initiative of erecting them. Id. The letter also requires Defendant to "[p]rovide documentation that the Department will have an unrestricted ability to perform [its] maintenance within the limits of Route 655." Id. That acknowledgement of VDOT's maintenance responsibilities is limited to Route 655 and does not even imply that it extends to the Current Virginia Landing. Even the recommendation for a sign stating "Ferry Traffic Only" is not evidence of an established public landing, as it could be consistent with VDOT managing traffic flow and providing information to the public that the ferry is the only outlet to the road. As such, even if the letters regard input on construction to areas beyond the "End of State Maintenance" sign, they are not conclusive, in and of themselves, that the area beyond the sign is public. Thus, the letters do not compel the Court to accept the Defendant's argument.

Finally, the Defendant implores a logical consideration of the circumstantial facts. The Defendant argues that there is no rationale for Route 655 to be taken into the State secondary highway system other than to provide public access to the public ferry landing. While the argument is not irrational, the Court must base its decisions on facts and evidence, not mere speculation. It is not uncommon for public roads to lead to private property (i.e. neighborhoods, shopping centers, etc.). There is no legal or factual basis to support a contention that a public road provides access exclusively to public areas. A finding that the purpose of Route 655 did not include being a means of transport to private destinations would be speculation. Without evidence supporting that conclusion, this line of argument is unpersuasive.

In addition to the insufficiency of evidence to establish that the Current Virginia Landing and Approach are public, there was also adduced evidence that tended to prove that the Current Virginia Landing and Approach are private property. Such evidence obviously frustrates the establishment of the posited defenses.

The parties have stipulated that neither Loudoun County nor the Commonwealth currently maintain any part of the Approach or the Current Virginia Landing beyond the "End of State Maintenance" sign and have not done so since at least 1946. See Court Exhibit 1 ¶ 34. To the contrary, the Property beyond the sign has been privately maintained.

Private property and ferry traffic only signs were also erected by the parties at the

system recognizes that the defendant has been shown culpable under the applicable elements of a claim and burdens of proof, though a measurable amount of loss either has not been established or is not warranted for other reasons on the facts of the case. Plaintiffs' prevailing status is recognized and vindicated by such an award

Considering that Plaintiffs terminated the License Agreement in 2004 and the Defendant

> (1) he conferred a benefit on the defendant; (2) the defendant knew of the benefit and should reasonably have expected to repay the plaintiff; and (3) the defendant accepted or retained the benefit without paying for its value.

Schmidt v. Household Fin. Corp., II, 276 Va. 108, 116 (2008) (internal citations omitted).

As discussed above, the Plaintiffs have established that the Defendant continued to use the Property in operating its ferry even after the termination of the License Agreement. As such, the Defendant should reasonably have expected to pay the Plaintiffs for any benefit received

the Plaintiffs would be entitled to additional damages, if they are proven, for the unjust enrichment of the Defendant resulting from business conducted while trespassing.

A technical issue arises because the Plaintiffs did not file their Complaint in this action [redacted]

The Defendant, however, argues that because punitive damages are not an issue, its ability to pay has no relevance in determining the fair value of its use of the Property. The Court agrees with the Defendant.

[redacted]

IRS category. The Defendant further argues that Owings did not distinguish between the Defendant's income from its ferry operations and its income from investments or retail operations, which are unrelated to the use of the Property. The Defendant argues that calculating the amount of compensation due to the Plaintiffs based on the average income and rental

Differently, in this case, the methodology requires speculation on various fronts. First, it is speculative that the cost of land rental in general or of the Property, in particular, is based in any way upon a percentage of a potential renter's net income. It also requires speculation that the cost of land rental in general, or of the Property, in particular, relies on the type of business that the land is used for. There is no evidence that a business's net income or the type of business is a consideration in the calculations, negotiations, and ultimate agreement between a landowner and business owner. No evidence was presented to establish that the relationship between net income and rental expenditures is more than coincidental.

[redacted]

"in the absence of proof of the value of the benefit, the court could enter no judgment for plaintiff." Raven Red Ash, 185 Va. at 550.

For these reasons, the Court finds that, although the Plaintiffs have established that the

Mr. Huber shall prepare and circulate for entry an Order consistent with this opinion, to