

IN THE CIRCUIT COURT FOR CUMBERLAND COUNTY, TENNESSEE

LAUREL HILLS WATER SYSTEM,
in Receivership, by and through its
Court-Appointed Receiver,
RECEIVERSHIP MANAGEMENT, INC.,


Petitioner,

Docket No. CC1-2016-CV-6201
Jury Demanded

v.

Moy Toy, LLC, A Tennessee
Limited Liability Company, and
Terra Mountain Holdings, LLC
a Georgia Limited Liability Company,

Respondents.

DATE FILED 4-3 20 17

Circuit Court Clerk PF

**RESPONDENT MOY TOY, LLC'S MOTION TO DISMISS
PETITION FOR CONDEMNATION OR FOR MORE DEFINITE STATEMENT**

Respondent, **MOY TOY, LLC**, a Tennessee limited liability company ("**Moy Toy**"), by and through its undersigned counsel, pursuant to hereafter cited Tennessee Rules of Civil Procedure and other applicable law, respectfully moves the Court to dismiss the Petition filed in the above-styled matter, or alternatively, to require of Petitioner a more definite statement.

In support of this motion, **Moy Toy** states and would show as follows:

Preliminary Statement

Moy Toy is the successor developer of the development generally known as Renegade Mountain located in Cumberland County, Tennessee. Renegade Mountain is a deed restricted community, said restrictions being set out in numerous Declarations of Restrictions and

Covenants (hereafter “Deed Restrictions”) as originally filed and amended over the years, all of which are recorded in the public records. In accordance with the Deed Restrictions and the various recorded Plats¹, **Moy Toy** has numerous contractual rights not only as to the lands and properties it owns, but to future development including rights to own and operate a central water system. **Moy Toy’s** rights predate by decades this Petition and the appointment of Receivership Management, Inc. (the “**Receiver**”) over the Laurel Hills Water System.

The **Receiver** is a court-appointed professional receivership company over the assets and operations of the water system formally owned and operated by the Laurel Hills Condominiums Property Owners Association, Inc., a Tennessee non-profit association. The **Receiver** operates the water system pursuant to court order but is a non-certificated utility as such term is defined under Tennessee laws and regulations.²

Incorporated by reference is the Petition filed and commencing this action by the **Receiver**. The allegations of the Petition are incorporated in this motion and are to be considered in their entirety when addressing the question of whether the **Receiver’s** petition is to be dismissed in whole or in part. Further, the Exhibits (Exhibits “A” through “H”) attached to the Petition are encompassed within the four corners of the Petition and must not contradict or negate the material allegations thereof.

For purposes of this motion, the Court must decide whether the Petition itself fails to state a claim upon which relief can be granted. Tennessee Rule of Civil Procedure 12.02.

¹ The recorded Plats as referenced in the Petition, and presumably incorporated therein, document Moy Toy’s rights of reserved easements and ownership of the private streets. Further, note that some of the recorded Plats referenced in the Receiver’s petition are illegible and/or contain different reservation provisions or none at all.

² Laurel Hills Condominium Property Owners Association (“Laurel Hills”) previously applied to the Tennessee Regulatory Authority (“TRA”) for a Certificate of Public Convenience and Necessity (“CCN”) which application was denied. Laurel Hills, as previous operator of the water system, was a non-certificated entity. No CCN has been issued to the Receiver. Moy Toy asserts that only a certificated public utility arguably has the power of condemnation as a matter of law, and then, such power must be exercised in strict compliance with applicable statutes and case law.

Additionally, the Court must further consider if the Petition is so vague or ambiguous, or suffers from other pleading deficiencies, such that a party cannot reasonably be required to frame a responsive pleading, thus requiring a more definite statement. Tennessee Rule of Civil Procedure 12.05. **Moy Toy** seeks such relief in this motion.

General Pleading Deficiency

Tennessee Rule of Civil Procedure 8.01 requires that a pleading for relief “shall contain (1) a short and plain statement of the claim showing that the pleader is entitled to relief, and (2) a demand for judgment for the relief the pleader seeks.” Rule 8.05(1) further requires that each averment of a pleading shall be simple, concise and direct. The Petition filed by the **Receiver** is anything but “concise and direct.” It continually mixes different causes of action (i.e. condemnation, declaratory relief, request for clarification, etc.) in a mishmash fashion, is not broken out in separate counts each with a single theory of recovery, right, or remedy, and is obviously not a short and plain statement of the **Receiver’s** alleged claims. Instead, it is a mixture of factual allegations, arguments of law, and overall, presents as an extremely verbose, ambiguous, and confusing pleading containing eighty-nine (89) paragraphs consisting of twenty-six (26) pages, and concluding with one single prayer for relief, which prayer fails to comply with applicable pleading rules and is intentionally vague and ambiguous.³

³ Reference is made to Paragraph 5 of the Prayer for Relief which states: “The Court issue orders declaring rights and/or vesting title as to property and/or easement rights as requested herein. . .”, but there is no specificity in the preceding eighty-nine (89) paragraphs that would apprise Moy Toy and others of exactly what the Receiver seeks, the relief sought against each of the named parties or entities (some of the named persons or entities are not even parties to the lawsuit) such that a responding party cannot reasonably be required to frame a responsive pleading or set out its affirmative defenses to each of the claims, causes of action, etc. which the Receiver has bundled in what is essentially a single count lawsuit.

Specific Grounds for Dismissal

1. The allegations of the Petition fail to show or establish the **Receiver** is vested with the power or right of eminent domain. The **Receiver** operates a non-certificated utility. Only a certificated utility arguably has the right of condemnation to seek property rights of third parties. Contrary to the **Receiver's** direct allegations, the Orders or the Amended Orders Appointing Receiver (See: Exhibits "A" and "B" to the Petition) issued by the receivership court fail to vest the **Receiver** with the power of eminent domain or authorize the **Receiver** to exercise any such power including the bringing of this Petition. Moreover, the Tennessee Code citations asserted by the **Receiver** as standing to bring this Petition do not grant the Receiver such standing. Tenn. Code Ann. § 29-16-101, et seq.

2. Neither the laws of the State of Tennessee, its Constitution, or the Constitution of the United States permit the taking of private property as alleged in this Petition where the property or property rights are sought for a private party. As a matter of law, under the facts alleged in the Petition, the **Receiver** cannot condemn private property or the rights associated therein for the benefit of a third party, even if it had the power or right of eminent domain.

3. There is a complete failure to allege with specificity a proper legal description by metes and bounds, or otherwise, sufficient to identify the property or the specific property rights the **Receiver** seeks to take by condemnation or under the guise of vague allegations seeking clarification or declaratory relief.⁴ A specific description of the land and the specific property

⁴ See: TCA Sec. 29-16-104 providing that a petition for condemnation set out, among other things: (1) the parcel of land or rights therein or incident thereto a portion of which is wanted, and the extent wanted; (2) the object for which the land, etc., is wanted; and (3) a prayer that a suitable portion of land or rights maybe decreed to the petitioner, and set apart by metes and bounds, or other proper mode. Here, the Petition on its face fails to set forth any legal description, by metes and bounds, or otherwise that can be located by a surveyor and which would provide the party who owns such lands or rights a sufficient description thereof. In all cases, the petition must set forth some specific boundaries. See: Hydro Electric Corp. v. Shanks, 156 Tenn. 91 (Tenn. 1927), and subsequent decisions, including Boone v. Frazor, 188 Tenn. App. Lexus 468 (Tenn. App. 1988) wherein the Court dismissed a petition in condemnation for insufficiency to provide an adequate description of the property sought for a right-of-way.

rights the **Receiver** seeks is also required for **Moy Toy** to assess and determine severance damages to the remainder of its lands and/or property rights. This is particularly relevant to the rights the Receiver seeks to condemn involving the water tower deed restrictions, the main water supply line across **Moy Toy's** property, the rights to and in a utility easement within the property and lands shown in the recorded Plats, and rights to Renegade Mountain Parkway which is otherwise gate restricted.

4. There is a failure to join necessary and indispensable parties. In the recorded Deed Restrictions, the master homeowners association known as the Renegade Mountain Community Club ("RMCC") has various rights and obligations with respect to the streets, alleyways, and travel ways within Renegade Mountain which the **Receiver** either seeks to take, modify, or encumber. RMCC is a necessary and indispensable party. Furthermore, because the **Receiver** seeks undefined easements (alleged to be "utility easements") across, under, or through the individual lots within the recorded Plats, each of the lot owners are necessary and indispensable parties and must similarly be joined in this action. Tenn. R. Civ. P. 12.02(7) and 19.

5. The Petition fails to allege or adequately plead who owns the properties (once adequately described) where the **Receiver** seeks easements or other property rights.

6. The allegations of the Petition fail to establish a legal necessity for condemnation of the property or property rights the **Receiver** seeks. Tenn. R. Civ. P. § 29-16-101, et seq.

7. As to the **Receiver's** claims for declaratory relief, notwithstanding their vagueness, the allegations of the Petition fail to establish there is an actual case in controversy for which declaratory relief can properly issue.

8. The exhibits (Exhibits “A” through “H”) attached to the Petition contradict or negate the material allegations of the Complaint in many instances, and are repugnant to the claims or causes of action the **Receiver** attempts to allege.

9. In the Petition, the **Receiver** requests clarification or declaratory relief concerning a certain “Settlement Agreement” (Paragraphs 16 through 23 of the Petition) to which the **Receiver** disclaims party status. As a matter of law, the **Receiver** cannot seek clarification or declaratory relief of a contractual agreement wherein the **Receiver** is not a party. Assuming, *arguendo*, the **Receiver** is an intended third party beneficiary of said agreement, which **Moy Toy** believes it is, the allegations of the Petition and the claims or rights the **Receiver** seeks with respect to said agreement fail to state a claim upon which relief can be granted.

10. The Petition seeking condemnation or the exercise of the power of eminent domain is unconstitutional on its face in that the allegations of the Petition clearly show that it is a taking of land for the purpose of conferring a private benefit on a particular private party. The allegations of the Petition further show that it is a façade of a taking under the pretext of a public purpose, when its actual purpose is to bestow a private benefit.

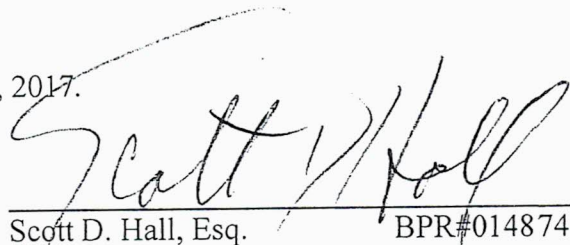
11. The Petition fails to state a claim upon which relief can be granted wherever it seeks “easements” to existing waterlines, including the main supply line and the distribution and service lines by reason of the fact such lines have been in existence for decades, and certainly in excess of one (1) year. Consequently, an “easement” already exists as to existing lines. See: TCA Sec. 29-16-124. Additionally, there has heretofore been granted the **Receiver** that certain Irrevocable License Agreement For Existing Utilities (as alleged in the Petition), which license is

sufficient as a matter of law to confirm that the existing pipes and lines have a legal right to be at the location where they exist as of the date of the license.

Conclusion

For the foregoing reasons, **Moy Toy** respectfully requests the Court to dismiss the Petition or portions thereof, or alternatively as to those claims or causes of action not dismissed, order a more definite statement in the form of an amended pleading consistent with applicable Tennessee Rules of Civil Procedure.

Submitted this the 31st day of March, 2017.

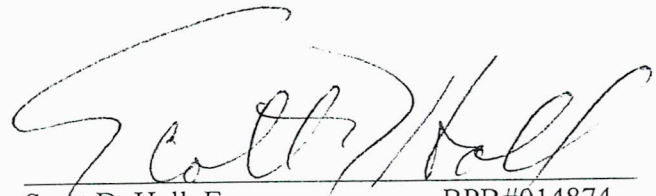


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Certificate of Service

The undersigned hereby certifies that a true and exact copy of the foregoing Respondent **Moy Toy, LLC** Motion to Dismiss Petition for Condemnation or For More Definite Statement has been served upon the following counsel, **J. Graham Matherne, Esquire, Wyatt, Tarrant & Combs, LLP, 333 Commerce Street, Suite 1400, Nashville, TN 37201**, in interest herein by delivering same to the address of said counsel, or by mailing same to the offices of said counsel for Petitioner by United States Mail with sufficient postage thereon to carry it to its destination.

This 31st day of March, 2017.



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