

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.

FILED

4-3 2017



PF

Circuit Court Clerk

**RESPONDENT TERRA MOUNTAIN HOLDINGS, LLC MOTION TO DISMISS
PETITION FOR CONDEMNATION OR FOR MORE DEFINITE STATEMENT**

Respondent, **TERRA MOUNTAIN HOLDINGS, LLC**, a Georgia limited liability company ("**Terra Mountain**"), 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, require of Petitioner a more definite statement. In support of this motion, **Terra Mountain** states as follows:

Preliminary Statement

Terra Mountain owns property located within the development known as Renegade Mountain located in Cumberland County, Tennessee. The property owned by **Terra Mountain** is subject to a Deed of Conservation Easement as set forth and alleged in the Petition filed by Plaintiff to commence this action. See: Paragraphs 32 and 33 of the Petition, which is incorporated herein by reference. **Terra Mountain** does not own the main water supply line

located on its property nor does it claim any right, title, or interest in and to the pipe and its appurtenances. There is a reserved easement for the supply line and pipe located on **Terra Mountain's** property as set forth in the Deed of Conservation Easement, Exhibit "H" to the Petition. **Terra Mountain** does not have a legal description, by metes and bounds or otherwise, of the water line. Based on the allegations of the Petition, neither does the Receiver.

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.¹

The Petition filed by the **Receiver** in this action is incorporated herein for reference. The allegations of the Petition are therefore 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. Tenn. R. Civ. P. 12.02. 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

¹ 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. Terra Mountain 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.

requiring a more definite statement. Tenn. R. Civ. P. 12.05. **Terra Mountain** seeks such relief in this motion.

General Pleading Deficiency

The claims of the **Receiver**, and the various property or property rights the **Receiver** seeks from **Terra Mountain** appears to be limited to the main water line that crosses **Terra Mountain's** property. The Petition filed by the **Receiver** mixes different causes of action (i.e. condemnation, declaratory relief, request for clarification, etc.) in the same allegations set out against Moy Toy in that section of the Petition entitled "Water Supply Line". There is no ad danum allegations or specific claims for relief set out in the subsection of the Petition containing the allegations against **Terra Mountain**. As such, the pleading violates Tennessee Rules of Civil Procedure 8.01 and 8.05(1) respectively. As a distinct and separate party to this action, **Terra Mountain** is entitled to a separate count against it with proper allegations of all theories of recovery, right or remedy, by way of a short and plain statement of the claim showing that the **Receiver** is entitled to relief. Claims against **Terra Mountain** should not be intermixed in a confusing fashion with the **Receiver's** claims against other parties.

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, Tennessee's 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.²

4. The allegations of the Petition fail to establish a legal necessity for condemnation of the property or property rights the **Receiver** seeks.

5. 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.

² 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.

6. 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.

7. 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 **Terra Mountain** 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.

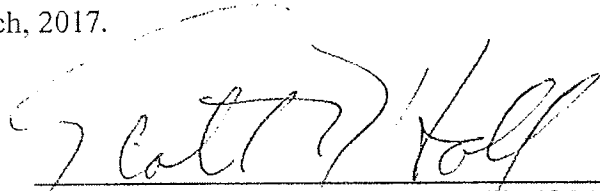
8. The Petition seeking condemnation or the exercise of the power of eminent domain is unconstitutional on its face in that the allegations of the Petition clearly show that it is a taking of land for the purpose of conferring a private benefit on a particular private party. The allegations of the Petition 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.

9. The Petition fails to state a claim upon which relief can be granted wherever it seeks “easements” to existing waterlines, on **Terra Mountain's** property, and specifically, the main supply line by reason of the fact said line has been in existence for decades, and certainly in excess of one (1) year. Consequently, a “easement” already exists. See: Teen. Code Ann. § 29-16-124.

Conclusion

For the foregoing reasons, **Terra Mountain** 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.

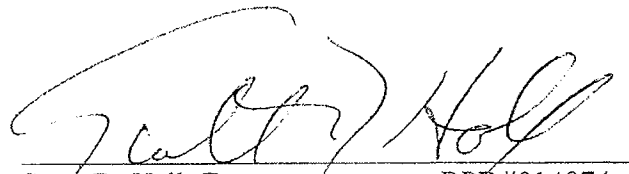


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Certificate of Service

The undersigned hereby certifies that a true and exact copy of the foregoing Respondent **Terra Mountain Holdings, 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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