

**IN THE CIRCUIT COURT IN AND
FOR FLAGLER COUNTY, FLORIDA**

CASE NO.: 2018 CA 000484

DIVISION:

MUD MUCKERS, LLC,

Plaintiff,

vs.

**GEORGE E. ALLEN, III an individual,
JOHN B. JOHNSTON, an individual,
ARTHUR DURSHIMER, III, an individual,
GEORGIA L. DURSHIMER, an individual,
IDA A. PREVATT, an individual,
STEVEN L. DURSHIMER, an individual,
LILA ALLEN PONTIUS, an individual,
NELL J. BROWN, an individual, and
ALBERT B. JOHNSTON, an individual,
all d/b/a ALLEN OPERATING COMPANY,
a partnership or joint venture,**

Defendants.

COMPLAINT

COMES NOW Mud Muckers, LLC, a Florida Limited Liability Company hereafter referred to as the Plaintiff, by and through its undersigned attorney, and submits this its Complaint against George E. Allen, III, Nell J. Brown, John B. Johnston, Arthur B. Durshimer, Ida A. Prevat, Steven L. Durshimer, Lila Allen Pontius, Nell J. Brown and Albert B. Johnston, individually and d/b/a Allen Operating Company, a partnership or joint venture, and states;

COMMON ALLEGATIONS

1. This is an action for money damages in excess of \$15,000.00.
2. The Plaintiff is a Florida Limited Liability Company.
3. This action is based on a lease of real property located in Flagler County, Florida. A copy of that lease is attached hereto and incorporated herein by reference.

4. No entity called Allen Operating Company is registered to do business in the State of Florida. Upon information and belief, and at all times pertinent hereto, each individual Defendant held an interest in the leasehold property located in Flagler County, Florida and operated that property either as a partnership or joint venture under the name Allen Operating Company.

5. At all times pertinent hereto George E. Allen, III was an agent of Allen Operating Company with the actual and apparent authority to act on behalf of Allen Operating Company and its individual members.

6. George E. Allen, III is an individual. John B. Johnston, is an individual. Arthur Durshimer, III is an individual. Georgia L. Durshimer is an individual. Ida A. Prevatt is an individual. Steven L. Durshimer is an individual. Lila Allen Pontius is an individual. Nell J. Brown is an individual. Albert B. Johnston is an individual. Collectively they do business together in Flagler County Florida as Allen Operating Company.

7. On or about January 26, 2008 the Plaintiff and the Defendant entered into a written lease of real property (referred to above in paragraph 3).

8. Said lease was prepared by Defendants' agent George E. Allen, III.

9. The lease contained an option for renewal and the Plaintiff and Defendants orally agreed to exercise that option extending the lease term until October 2018.

10. The Plaintiff has completed each condition precedent to maintaining this action required of it under the lease and the laws of Florida.

COUNT I

11. Plaintiff incorporates the Common Allegations herein by reference.

12. The Defendants have materially and significantly breached the lease in the following material aspects:

- a. They have excluded the Plaintiff from the use of the property during the Florida hunting seasons;
- b. They have denied Plaintiff access to the property;
- c. They have required Plaintiff to utilize an alternate location not described in or part of the leased property;
- d. They have refused Plaintiff the use of the property for the purpose set forth in the lease;
- e. They have terminated the lease without the plaintiff's consent.

12. As a result of Defendants' breaches the Plaintiff has suffered money damages, including incidental damages, in excess of \$15,000.00, not including any interest allowed by law, costs of court and a reasonable attorney's fee.

13. Plaintiff's incidental damages include lost profits and the loss of the beneficial use of leasehold improvements to the property of the Defendants.

14. Plaintiff has retained the undersigned counsel to represent it in this matter and is obligated to pay a reasonable fee for services rendered in this matter and costs associated with the prosecution of this matter. Plaintiff is entitled to have those attorney's fees awarded to it pursuant to the lease.

WHEREFORE the Plaintiff prays for judgment for money damages, together with any interest allowed by law, a reasonable attorney's fee and the costs allowed by law incurred in furtherance of this action.

COUNT II

15. Plaintiff incorporate the Common Allegations herein by reference.

16. Plaintiff owned and possessed certain personal property including:

- a. (1) Tow behind tractor mower unit including large mower;
- b. (10) street lights on aluminum poles;
- c. ((1) 8 X 10 walk in cooler with refrigeration unit;
- d. (1) 5500 w generator;
- e. (1) 3" gas powered pump;
- f. (1) 16' car trailer;
- g. (12) large street lights with pole brackets;
- h. (1) 1000-gallon water tank.

17. Said property was placed on the leasehold property incident to the Plaintiff's business operations at that location.

18. When Plaintiff was dispossessed Defendants refused to allow Plaintiff to retrieve its personal property.

19. Defendants temporarily deprived Plaintiff of the use and benefit of the personal property described above.

20. As a result of Defendant's Conversion of Plaintiff's personal property Plaintiff has suffered damages including the reasonable value of that personalty.

21. Plaintiff has suffered incidental damages as a result of the loss of its personal property in the form of lost profits.

WHEREFORE the Plaintiff prays for judgment for money damages, together with any interest allowed by law, and the costs allowed by law incurred in furtherance of this action.

COUNT III

22. Plaintiff incorporate the Common Allegations herein by reference.

23. Plaintiff owned and possessed a truck which it kept on the property which it used to haul its equipment including the large pump. While the leasehold property was in the sole possession of the Defendants who maintained sole control of the leasehold property the tires were slashed on the truck, all the windows were broken out of the truck, the lights on the truck were all destroyed and all the pump hoses were cut.

24. Defendants owed Plaintiff a duty to take reasonable precautions to protect Plaintiff's property, but failed to do so.

25. Defendants failed to exercise ordinary care to protect Plaintiff's property while it was in Defendants' control.

26. As a result of Defendants' failure to exercise ordinary care Plaintiff suffered damages.

WHEREFORE the Plaintiff prays for judgment for money damages, together with any interest allowed by law, and the costs allowed by law incurred in furtherance of this action.

ARMISTEAD W. ELLIS, JR., P.A.

Armistead W. Ellis, Jr.

Armistead W. Ellis, Jr., Esq.

P.O. Box 127

Daytona Beach, FL 32115

386-255-2433

Pleadings@BiffEllisLaw.com

Fla. Bar No. 237191

LEASE

THIS AGREEMENT entered into this _____, day of October, 2008, by and between (ALLEN OPERATING CO.) hereinafter referred to as "Lessor", and MUD MUCKERS, LLC, hereinafter referred to as "Lessee", as described below:

Lessor: ALLEN OPERATING CO.
P.O. Box 245
Bunnell, Fl. 32010
Telephone: (386) 631-6737

Lessee: Name: MUD MUCKERS, LLC
c/o Robert Harris, Member/Manager
Address: 127 Minerva Rd.
City, State, Zip: Daytona Beach, Fl. 32118
Phone: (386)-631-6737

1. LEASE:

Lessor hereby rents and leases to Lessee, for the term described below, that certain vacant real property located in Bunnell, Flagler County, Florida, having a legal description as shown on Exhibit A, attached hereto (referred to as the "Property").

2. TERM:

The term of this lease will begin on October _____, 2008 and continue for a period of five (5) years ending on October _____, 2013.

3. LEASE RENEWAL:

Subject to the Lessee complying with all provisions of this lease agreement during the first five years of the lease, then the Lessee shall have options for another ~~5~~ (5) five (5) year periods. Each option may be exercised by the Lessee, notifying the Lessor one hundred eighty (180) days prior to the expiration of each five (5) year term. In the event the Lessee fails to give such notice, the Lessee shall have waived such option to renew.

ART
LA
EJS
WS

4. RENT:

Lessee is leasing vacant property for the purpose of hosting "ATV" EVENTS". The gate fees for attendance at said events shall be split 60/40, with Lessor to receive 40% of the gross gate fees and Lessee to receive 60% of the gross gate fees; said 40% shall be paid to Lessor within five (5) days following each event. Lessee shall notify Lessor, in writing of each scheduled event. The Lessor has the right to a representative at the gate to assure them of a fair accounting. There

shall be no "free passes" without the consent of Lessor. Additionally, Lessee shall be solely responsible for all expenses, permitting and insurance associated with said events.

5. SECURITY DEPOSIT:

Lessor is not requiring a security deposit due to improvements to the subject property by lessee.

6. INSURANCE:

Lessee will maintain casualty and liability insurance on the property at Lessee's expense, up to \$500,000 and have Lessor as additional insured.

7. PROPERTY CARE:

Lessee accepts the property in an "AS IS" condition with no express or implied warranties being made by the Lessor. During the term, Lessee, at its expense, shall maintain all property leased herein in good condition and in accordance with all applicable laws and regulations (including building, health and safety codes), and will make any necessary repairs (including painting, indoor and out) to the property and all equipment and furnishings and will maintain the grounds and parking areas. The Lessor shall have no responsibility for any repairs or maintenance and shall not be liable for any damage to any other personal property placed or moved in the premises leased herein by the Lessee.

8. IMPROVEMENTS:

Any and all improvements or modifications to the property must be approved in writing by Lessor including signage structural changes and equipment changes. Any and all improvements or modifications made to the property will become the property of the Lessor at the end of the term of the Lease unless otherwise specified in writing prior to any changes.

9. USE:

The property may not be used for any purpose other than the operation of ATV Events without the prior written consent of Lessor.

10. CONDITION:

Lessee shall maintain the property in good condition and repair and return the same to Lessor at the end of the term in the same condition as at the commencement of the term, ordinary wear and tear excepted.

11. INDEMNIFICATION:

Lessee agrees to indemnify and hold Lessor harmless from any and all claims, damages, expenses, liabilities and actions, including attorney's fees and costs, arising directly or indirectly out of this Lease or the use of occupancy of the property by Lessee, and Lessee's customers, guests or invitees of Lessee, or others, during the term of this Lease.

fails to comply with any other term or provision of this Lease within five (5) days after receipt of written notice from Lessor specifying the default. Lessor may further pursue any and all remedies in equity or at law. The parties agree that the venue for any such proceedings shall be in Flagler County, Western Division, and Florida. No waiver of any default will be deemed to be a waiver of any other or further default.

18. ATTORNEY'S FEES:

Lessor will be entitled to recover from Lessee all of Lessor's costs and expenses, including reasonable attorney's fees, in the event Lessor is required to engage an attorney or otherwise institute collection efforts or legal actions for purposes of collecting rent or enforcing any of the terms, conditions or covenants of the Lease.

19. ENVIRONMENTAL DAMAGES:

Lessee shall abide with all federal, state and local environmental rules, regulations, or law; shall not permit any environmental damage or contamination to the leased premises; and shall hold Lessor harmless from any actions or causes of action occurring or accruing against Lessor because of Lessee's occupancy, including but not limited to, all reasonable costs of the defense of such actions.

20. SUBORDINATION:

This lease shall be subject and subordinate to any and all present and future mortgages, deeds to secure debt, deeds of trust, or other encumbrances which may be granted by the Lessor for the property or any part thereof. The Lessee agrees to execute any and all documents in the future to subordinate this Lease to such documents.

21. ADA COMPLIANCE:

The Lessee shall be responsible for complying in all respects with the Americans with Disability Act of 1990; as such Act may be amended from time to time.

22. NOTICES:

Any notices required to be delivered pursuant to this Lease must be delivered to the respective parties at their addresses as shown on the first page of the Lease, or at such other address as either may provide to the other by like notice, and will be effective upon receipt.

23. TIME: TIME IS OF THE ESSENCE.

24. GOVERNING LAW:

The terms of this Lease shall be governed by the laws of the State of Florida, Flagler County and City of Bunnell.

IN WITNESS WHEREOF, the Lessee and Lessor have hereunto executed this agreement for the purpose herein expressed, the day and year above written.

THIS IS INTENDED TO BE A LEGALLY BINDING DOCUMENT, IF NOT FULLY UNDERSTOOD, SEEK LEGAL COUNSEL BEFORE SIGNING.

Signed, sealed and delivered
In the presence of:

Printed Witness Name


Printed Witness Name


ROBERT HARRIS, Manager/Member
Lessee

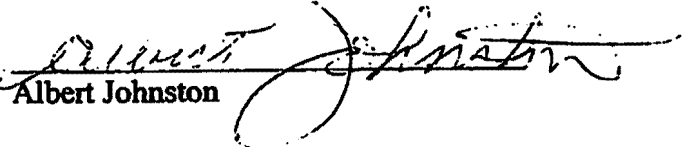

Taryn Gordon

Printed Witness Name

ALLEN OPERATING CO.


George Allen

STATE OF FLORIDA
COUNTY OF VOLUSIA


Albert Johnston

I HEREBY CERTIFY that on this day, before an officer duly authorized in the state and county aforesaid to take acknowledgments, personally appeared ROBERT HARRIS, to me well known to be the person described herein, who provided the following form of identification: FL Driver Lic and who executed the same. No oath was given.

WITNESS my hand and seal in the county and state last aforesaid this 26th day of January, 2008.



ELBERT TUCKER
MY COMMISSION # DD 398808
EXPIRES: February 22, 2009
Bonded Thru Budget Notary Services

