

IN THE CIRCUIT COURT, SEVENTH
JUDICIAL CIRCUIT, IN AND FOR
FLAGLER COUNTY, FLORIDA

MUD MUCKERS, LLC,

Plaintiff.

v.

CASE NO.: 2018 CA 000484

GEORGE E. ALLEN, III an individual,
etc., all d/b/a ALLEN OPERATING COMPANY,
a partnership or joint venture,

Defendants.

_____ /

DEFENDANTS' PRETRIAL STATEMENT

Defendants, GEORGE E. ALLEN, III an individual, etc., all d/b/a ALLEN OPERATING COMPANY, a partnership or joint venture, having not received a proposed joint pretrial statement from Plaintiff, hereby files this Pretrial Statement, as follows:

1. Statement of case (This is a non-jury trial):

This case is about the lease of raw land by Defendants to Plaintiffs. The lease was entered into in October of 2008. Plaintiffs would use the property for four wheeler events. Soon before the lease expired, my clients were contacted by investigators from St. Johns Water Management District about wetlands violations. As the name implies, four wheelers like the mud, which in this case, included the waters of Haw Creek.

Both parties met with SJWMD, who told them that they would need to fence several miles along the creek to keep riders out. The Lease terminated at the end of October 2013. Instead of renewing the lease, the parties agreed to try another drier location for events. The event did not occur until after a year later and were not very popular as there was no mud to

muck around in. The lease expired and was not renewed in writing as required by the lease. The Plaintiff did not come back to collect their property for an extended period of time. Any damages to personal property are barred by the terms of the lease.

Defendants are not in breach of the lease and are entitled to recover attorneys fees.

2. Admitted Facts:

(a) Exhibit A hereto is an accurate copy of the Lease which is the subject matter of this litigation.

(b) The Lease was entered into between the parties in October 2008 and the termination date was in October 2013.

(c) Plaintiff's agents met with representatives of the St. Johns Water Management District.

3. Issues to be abandoned: None.

4. Issues to be tried:

(a) Whether the lease terminated

(b) Whether the lease was renewed in writing.

(b) Whether Plaintiffs' abandoned property at the site.

(c) Whether Plaintiff materially and significantly breached the Lease causing the Lease to be terminated and is, therefore, not entitled to relief.

5. Significant issues of law, procedure, or evidence: None.

6. Special damages: None.

7. Exhibit List: See Exhibit B attached.

8. Witness List: See Exhibit C attached.

9. Preemptory Challenges: Not applicable.

10. **Estimate of the number of days required for trial:** 2 days

11. **Other agreed matters:**

Requested stipulations are as follows:

(a) Photocopies of original documents may be used in place of originals.

(b) Photocopies of records from the St. Johns Water Management District may be admitted without authentication by records custodians.

(c) Photographs may be admitted without authentication by the person who took the photograph.

(d) All other objections regarding exhibits are reserved.

(e) Attorneys' fees to be awarded to be determined at a separate hearing after trial.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via E-Portal delivery to Armistead W. Ellis, Jr., Esq., at Pleadings@BiffEllisLaw.com on this 10th day of August, 2020.

/s/ Dennis K. Bayer

DENNIS K. BAYER, ESQ.
Florida Bar Number: 0512737
109 South 6th Street
Flagler Beach, FL 32136
Telephone: (386) 439-2332
Fax: (386) 439-6522
dennis@bayerlegal.com
pleadings@bayerlegal.com

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 ~~one~~ (1) five (5) year period. 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.

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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.

It is expressly agreed and understood that the Lessor shall not be liable for any damage or injury by water, which may be sustained by the Lessee or other person or for any other damage or injury resulting from the carelessness, negligence or improper conduct on the part of the Lessee or agents, or employees, or by reason of the breakage, leakage, or obstruction of the water, sewer or soil pipes.

12. CERTAIN NOTICES:

Lessee will promptly provide written notice to Lessor of any damage to the property, any injury to any person occurring on the property, any claim made by any person with respect to Lessee's use or occupancy of the property, and any repairs required to be made to the property by Lessor pursuant to the terms of the Lease.

13. INSPECTIONS:

Lessor and its agents will have the right to enter upon the property during reasonable business hours for purposes of making inspections and repairs, showing the property for sale or rent, and monitoring Lessee's compliance with this Lease.

14. CONDEMNATION:

In the event all or any part of the property is condemned for any public use or purpose by any legally constituted authority, Lessee and Lessor will each be entitled to cancel this Lease upon thirty (30) days' prior written notice to the other. In no event will Lessee have any right to receive any compensation or other award made in any such case for any taking of the property or for Lessee's interest therein. Lessor shall be entitled to all such award.

15. ASSIGNMENT:

This Lease may not be assigned, and the property may not be sublet in whole or in part by Lessee without the prior written consent of Lessor, which may be withheld for any reason.

16. RENTS:

Rents not received by the Lessor on or before 5:00 p.m. of the day herein set forth shall be subject to a late charge of ten percent (10%) of the amount of rent then due, which late charge will be due and payable immediately within then current week's rental payment.

17. DEFAULT:

Lessor may terminate this Lease and re-take possession of the property in the event that: (a) Lessee fails to pay any rent or other amount within three (3) days after the date due under this Lease; (b) Lessee fails to maintain the insurance required by this Lease; (c) Lessee abandons the property for a period of three (3) days; (d) Lessee files for protection under federal bankruptcy laws; (e) Lessee

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.

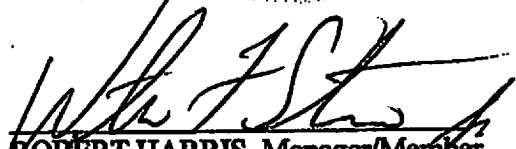
IN WITNESS WHEREOF, the Lessee and Lessor have hereunto executed this agreement for the purpose herein expressed, the day and year above written.

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:

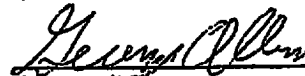
Printed Witness Name

Printed Witness Name


ROBERT HARRIS, Manager/Member
Lessee



Tanya Gordon
Printed Witness Name

ALLEN OPERATING CO.

George Allen

STATE OF FLORIDA
COUNTY OF VOLUSIA

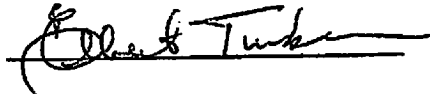

Albert Johnston

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 938808
EXPIRES: February 22, 2009
Bonded thru Budget Notary Services



Notary Public-State of Florida

Elbert Tucker
Printed Name
My commission expires:

State of Florida
County of Flagler

I HEREBY CERTIFY that on this day, before an officer duly authorized in the state and county aforesaid to take acknowledgments, personally appeared GEORGE ALLEN, to me well known to be the person described herein, who provided the following form of identification: Fla. Drs Lic. and who executed the foregoing instrument and he acknowledged before me that he executed the same. No oath was given.

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



ELBERT TUCKER
MY COMMISSION # DD 398608
EXPIRES: February 22, 2009
Bonded Thru Budget Notary Services

Elbert Tucker

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CASE NO.: 2018 CA 000484

GEORGE E. ALLEN, III an individual,
etc., all d/b/a ALLEN OPERATING COMPANY,
a partnership or joint venture,

Defendants.

DEFENDANTS' EXHIBIT LIST

COME NOW Defendants, by counsel, and pursuant to the Order Scheduling Jury Trial,
serves Defendants' Exhibit List, as follows:

1. Lease dated October 2008 entered into between the parties.
2. Transcript and Exhibits from Deposition of Barbara Hatchett, SJRWMD, taken February 12, 2020.
3. Transcript and Exhibits from Deposition of Gwendolyn Lafferty, taken February 12, 2020.
4. Transcript and Exhibits from Deposition of George E. Allen III, taken August 1, 2019.
5. Transcript and Exhibits from Deposition of Robert Harris, taken August 1, 2019.
6. Plaintiff's responses to discovery propounded by Defendants, and all documents produced pursuant thereto.
7. Any and all Requests for Admissions and Answers thereto.
8. All exhibits listed by Plaintiff.
9. Additional exhibits revealed by further discovery, upon reasonable notice.

EXHIBIT B

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via E-Portal delivery to Armistead W. Ellis, Jr., Esq., at Pleadings@BiffEllisLaw.com on this 11th day of June, 2020

/s/ Dennis K. Bayer

DENNIS K. BAYER, ESQ.

Florida Bar Number: 0512737

109 South 6th Street

Flagler Beach, FL 32136

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GEORGE E. ALLEN, III an individual,
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a partnership or joint venture,

Defendants.

DEFENDANTS' WITNESS LIST

COME NOW Defendants, by counsel, and pursuant to the Order Scheduling Jury Trial,
serves Defendants' Witness List, as follows:

1. Gwendolyn Lafferty
c/o Dennis K. Bayer, Esq.
109 South 6th St., Ste. 200
Flagler Beach, FL 32136
2. George E. Allen III
c/o Dennis K. Bayer, Esq.
109 South 6th St., Ste. 200
Flagler Beach, FL 32136
3. Albert B. Johnston
c/o Dennis K. Bayer, Esq.
109 South 6th St., Ste. 200
Flagler Beach, FL 32136
4. Lila Allen Pontius
c/o Dennis K. Bayer, Esq.
109 South 6th St., Ste. 200
Flagler Beach, FL 32136

5. Robert Harris
c/o Armistead W. Ellis, Jr., P.A.
319 North Ridgewood Ave.
Daytona Beach, FL 32114
6. William Stevens
c/o Armistead W. Ellis, Jr., P.A.
319 North Ridgewood Ave.
Daytona Beach, FL 32114
7. Barbara Hatchitt, PWS
St. Johns Water Management District
c/o Kris H. Davis, Esq.
4049 Reid Street
Palatka, FL 32177
8. Additional witnesses learned through discovery with reasonable notice.
9. All witnesses listed by Plaintiff.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via E-Portal delivery to Armistead W. Ellis, Jr., Esq., at Pleadings@BiffEllisLaw.com on this 11th day of June, 2020

/s/ Dennis K. Bayer

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