

IN THE CIRCUIT COURT OF THE COUNTY OF ST. CHARLES
STATE OF MISSOURI

Cynthia Silver)

and)

Jeffrey Silver)

Plaintiffs,)

v.)

Cause No. _____

Schulte Contracting & Services, LLC)

Division No. _____

Serve: Registered Agent David Schulte)

3656 Roads End Acres Road)

Imperial, MO 63051)

-and-)

Roy E. Harris, Jr)

Serve: 710 South Second Street)

St. Charles, Missouri 63301)

-and-)

Denah M. Harris)

Serve: 710 South Second Street)

St. Charles, Missouri 63301)

Defendants.)

**PETITION FOR CONSTRUCTION OF 710 S. SECOND STREET IN VIOLATION OF CITY
ORDINANCES, FAILURE TO OBTAIN CITY APPROVALS AND TRESPASS ON
PLAINTIFFS' PROPERTY**

ALLEGATIONS COMMON TO ALL COUNTS

Come now Plaintiffs CYNTHIA SILVER and JEFFREY SILVER and for their
allegations common to all counts generally state to the Court:

VENUE

1. That at all relevant times, the Plaintiffs are and were the owners of 716 South Second Street, St. Charles, Missouri, 63301 ("Silver Property at 716) in the County of St. Charles, State of Missouri.

2. That at all relevant times, the Defendants DENAH M. HARRIS and ROY E. HARRIS, JR are and were residents of the County of St. Charles, State of Missouri and owners of 710 South Second Street, St. Charles, Missouri 63391 ("Harris Property at 710").

3. That at all relevant times, the Defendant SCHULTE CONTRACTING & SERVICES, LLC is and was a validly existing company which, through its agents, servants, employees and registered agents, is transacting business and making contracts in the County of St. Charles, State of Missouri.

4. Defendants constructed a new house at 710 S. Second Street, St. Charles, Missouri 63301 ("Harris Property at 710").

5. That all construction occurred in the County of St. Charles, State of Missouri at 710 South Second Street, St. Charles, MO 63301.

6. That said Defendants, and each of them, are jointly and severally liable for Plaintiff's damages as each Defendant was acting as the principal and/or agent of the other Defendants herein.

CITY ORDINANCE VIOLATIONS

7. St. Charles City Ordinance 510.160 states:

It shall be unlawful to change, modify, abolish or alter any of the debris basins, grass waterways, diversions and other soil erosion control structures as permitted in a grading

permit; except with the prior consent and written approval of the Director of Engineering or his/her designee.

8. Defendants graded a berm straddling the Harris Property at 710 and Silver Property at 716 (see survey stake on the attached photo, Exhibit _____) all without written consent of the Director of Engineering.

9. Defendants graded a berm straddling the Harris Property at 710 and Silver Property at 716 (see the attached photo, Exhibit A) all without written consent of the Plaintiffs.

10. Defendants changed, modified, abolished and altered the berm on the Silver Property at 716 without a permit and removed and discarded the soil that was part of the Silver Property.

11. Defendants removed soil from the Harris Property at 710 and changed the grade and elevation of the Harris property at 710.

12. Defendants changed the grade and elevation of the Silver property at 716.

13. Defendants entered Plaintiffs' property with grading equipment without the written permission of Plaintiffs.

14. Defendants did not have a City grading permit for the Silver property at 716.

15. St Charles City Ordinance 400.1270(E) states:

Certificates of appropriateness shall be issued for a period of eighteen (18) months. If the project is not completed within the eighteen (18) month period according to the guidelines provided in the certificate of appropriateness, the project shall be deemed in violation of this Article. Extensions may be granted for just cause. Each extension shall be for a period of no longer than twelve (12) months.

16. On or about August 16, 2022 the City sent a letter warning that certificates were issued "...for a period of 18 months..." and if not completed within the 18 months "...the project shall be deemed in violation and any approvals will be void."

17. The certificate issued to Defendants expired on or about January 16, 2024.

18. Defendants did not obtain a written extension of the certificate

19. Defendants did not apply for a new certificate.

20. All approvals are now "void".

BUILDING PLAN VIOLATIONS

21. On or about August 16, 2022 the City sent a letter stating "Should the applicant's plans change, a revised plan must be submitted to the Landmarks Board for review and approval."

22. As built, the house does not comply with the plans approved by the City.

23. The Defendants have not filed a revised plan with the City to show the house as built.

24. The Defendants have not received City approval of the house as built.

PLAINTIFFS' HOME

25. Plaintiffs purchased a home at 716 adjoining the Harris property at 710 on or about December 4, 2023.

26. Before making the purchase, Plaintiffs had the Silver Property at 716 inspected. The inspection noted no interior water intrusion issues on the north wall (facing Harris Property at 710).

27. Previous owners (from 1957 to 2023) of Silver Property at 716 gave a Sellers' Disclosure which showed no water intrusion into the basement on the Silver Property at 716.

WATER DAMAGE

28. From the time of Plaintiffs' purchase of the Silver Property at 716 until Defendants began construction on the Harris Property at 710, the Plaintiffs experienced:

- A. no water intrusion;
- B. no water staining to basement ceiling tiles;
- C. no standing water along the north basement wall of the Silver Property at 716.

29. On or about April 25, 2024, the Defendants intentionally entered Plaintiffs property and graded a berm straddling the Harris Property at 710 and Silver Property at 716 (see the attached photo, Exhibit A) all without written consent of the Plaintiffs

30. During and following the construction activities of Defendants on the Harris property at 710, the Plaintiffs experienced:

- A. Water intrusion into the north side basement of the Silver Property at 716;
- B. Water stands along the north side basement of the Silver Property at 716;
- C. Silt deposits have collected along the north side basement of the Silver Property at 716;
- D. The basement ceiling of the Silver Property at 716 drips for up to three days following a rain;
- E. Plaintiffs were forced to place sandbags along the Silver Property at 716 to slow water intrusion from the Harris Property. (See photo, Exhibit B). The sandbags are still in place.

31. Plaintiffs have incurred attorney fees in bringing this lawsuit to stop Defendants and obtain relief and damages.

COUNT ONE - INTENTIONAL NUISANCE

Come now Plaintiffs CYNTHIA SILVER and JEFFREY SILVER and for Count One of their cause of action against Defendants SCHULTE CONTRACTING & SERVICES, LLC and DENAH M. HARRIS and ROY E. HARRIS, JR, state as follows:

32. Plaintiffs reallege, incorporate and adopt by reference paragraphs 1 through 30 as if set forth fully in this Count.

33. City Ordinance 400.560(B) states:

When a new building is constructed on a vacant lot between two (2) existing buildings or adjacent to an existing building, the new building and the yard around the new building shall be graded in such a manner as to meet existing grades and not to permit runoff of surface water to flow onto the adjacent properties.

34. The yard on the Harris property at 710 was intentionally not graded "to meet existing grades".

35. The yard on the Harris property at 710 was intentionally not graded so as to "not permit runoff of surface water to flow onto the adjacent properties".

36. City Ordinance 400.560(C) states

Final grades shall be approved by the Department of Community Development and the Department of Public Works.

36. The final grade on the Harris property at 710 was not approved by the Department of Community Development.

37. The final grade on the Harris property at 710 was not approved by the Department of Public Works.

38. Defendants intentionally graded the Harris property at 710 to direct and concentrate water on the adjoining Silver property at 716.

39. Such intentional grading and use by the Defendants of the Harris property at 710 was and is unreasonable

40. That as a direct and proximate result of the joint and concurrent actions of Defendants SCHULTE CONTRACTING & SERVICES, LLC and DENAH M. HARRIS and ROY E. HARRIS, JR, Plaintiffs were caused to be damaged.

WHEREFORE, Plaintiffs CYNTHIA SILVER and JEFFREY SILVER pray for judgment against Defendants SCHULTE CONTRACTING & SERVICES, LLC and DEHAH M. HARRIS and ROY E. HARRIS and each of them, jointly and severally in a sum that is fair and reasonable more than Twenty-Five Thousand Dollars (\$25,000) plus pre-judgment interest at the highest rate of interest allowed by law, attorney fees, costs herein expended, and for such other and further relief as this Court deems just and proper in the premises.

COUNT TWO - INTENTIONAL TRESPASS

Come now Plaintiffs CYNTHIA SILVER and JEFFREY SILVER and for Count Two of their cause of action against Defendants SCHULTE CONTRACTING & SERVICES, LLC and DENAH M. HARRIS and ROY E. HARRIS, JR, state as follows:

41. Plaintiffs reallege, incorporate and adopt by reference paragraphs 1 through 40 as if set forth fully in this Count.

42. On or about April 25, 2024, the Defendants intentionally entered Plaintiffs property and graded a berm straddling the Harris Property at 710 and Silver Property at 716 (see the attached photo, Exhibit A) all without written consent of the Plaintiffs

43. Defendants intentionally have concentrated and directed water onto Plaintiffs' property

44. That as a direct and proximate result of the joint and concurrent actions of Defendants SCHULTE CONTRACTING & SERVICES, LLC and DENAH M. HARRIS and ROY E. HARRIS, JR. Plaintiffs were caused to be damaged.

WHEREFORE, Plaintiffs CYNTHIA SILVER and JEFFREY SILVER pray for judgment against Defendants SCHULTE CONTRACTING & SERVICES, LLC and DEHAH M. HARRIS and ROY E. HARRIS and each of them, jointly and severally in a sum that is fair and reasonable more than Twenty-Five Thousand Dollars (\$25,000) plus pre-judgment interest at the highest rate of interest allowed by law, attorney fees, costs herein expended, and for such other and further relief as this Court deems just and proper in the premises.

COUNT THREE - TREBLE DAMAGES

Come now Plaintiffs CYNTHIA SILVER and JEFFREY SILVER and for Count Three of their cause of action against Defendants SCHULTE CONTRACTING & SERVICES, LLC and DENAH M. HARRIS and ROY E. HARRIS, JR, state as follows:

45. Plaintiffs reallege, incorporate and adopt by reference paragraphs 1 through 44 as if set forth fully in this Count.

46. Defendants intentionally entered Plaintiffs' property and graded a berm straddling the Harris Property at 710 and Silver Property at 716 (see the attached photo, Exhibit A) so as to remove and carry away from the Silver property at 716 rocks, dirt and grass.

47. Missouri Statute 537.340(1) RSMo states:

If any person shall... dig up, quarry or carry away any stones, ore or mineral, gravel, clay or mold, or any ice or other substance or material being a part of the realty, or any roots, fruits or plants, or cut down or carry away grass... in which such person has no interest or right, standing, lying or being on land not such person's own, the person so offending shall

pay to the party injured treble the value of the things so injured, broken, destroyed or carried away, with costs. Any person filing a claim for damages pursuant to this section need not prove negligence or intent.

48. That as a direct and proximate result of the joint and concurrent actions of Defendants SCHULTE CONTRACTING & SERVICES, LLC and DENAH M. HARRIS and ROY E. HARRIS, JR. Plaintiffs were caused to be damaged.

WHEREFORE, Plaintiffs CYNTHIA SILVER and JEFFREY SILVER pray for judgment against Defendants SCHULTE CONTRACTING & SERVICES, LLC and DEHAH M. HARRIS and ROY E. HARRIS and each of them, jointly and severally in a sum that is fair and reasonable more than Twenty-Five Thousand Dollars (\$25,000) plus pre-judgment interest at the highest rate of interest allowed by law, attorney fees, costs herein expended, and for such other and further relief as this Court deems just and proper in the premises.

MARTIN LEYHE STUCKMEYER & ASSOCIATES LLC

/s/ Lester C. Stuckmeyer Jr.
LESTER C. STUCKMEYER JR #45120
Attorney at Law
330 Jefferson Street
St. Charles, MO 63301
Telephone (636) 949-3730
office@mlslawmo.com