COURT OF CHANCERY OF THE STATE OF DELAWARE

SAM GLASSCOCK III VICE CHANCELLOR COURT OF CHANCERY COURTHOUSE 34 THE CIRCLE GEORGETOWN, DELAWARE 19947

Date Submitted: September 19, 2013 Date Decided: September 27, 2013

Paul G. Enterline Law Office of Paul G. Enterline 113 South Race Street Georgetown, DE 19947 John A. Sergovic, Jr. Sergovic, Carmean & Weidman, P.A. 142 East Market Street Georgetown, DE 19947

Re: Carleton D. Coker and Debra L. Coker v. Carol Walker Civil Action No. 7554-VCG

Dear Counsel:

I have before me the Plaintiffs' Motion for an Award of Costs Pursuant to Rule 54(d). Under that Rule, costs are "allowed as of course to the prevailing party."

Here, the Plaintiffs succeeded in their contention that an agreement between the parties involving a drainage ditch created an easement in their favor, with the Defendant's parcel being the burdened parcel.² After achieving this result via my post-trial Order, Plaintiffs had a surveyor, Charles E. Adams, Jr., create a plot plan, which was subsequently recorded with the Sussex County Recorder of Deeds. The Plaintiffs contend that the costs of creating and recording the plot plan are essentially "court costs," despite the fact that they were incurred after decision in

² See Coker v. Walker, 2013 WL 1858098 (Del. Ch. May 3, 2013).

¹ Ct. Ch. Rule 54(d).

this matter, because they were "necessary to make the [O]rder a permanent public record and to give full effect to the Court's [O]rder."

While, under Rule 54(d), costs are allowed "as of course," I have discretion in determining the appropriate expenses so to include.⁴ I note that the contract at issue here, which was ultimately held to establish an easement, was drafted by the Plaintiffs. It was the informality of that document that required its construction and vindication through litigation. In addition to the ambiguous nature of the document just noted, it had other deficiencies. It could have, but did not, embody a plot plan. It could have been, but was not, recorded at the time of creation. While I found that there was sufficient consideration flowing to the owner of the burdened estate in connection with the construction and utility of the drainage ditch to support the contract creating the easement, the drainage ditch was created largely for the benefit of the Plaintiffs. The creation and recording of the plot plan is entirely for their benefit. It is the Plaintiffs' property that is advantaged, and the Defendant's property that is burdened. For all these reasons, it would simply be inequitable to grant as court costs the post-trial expense of creating and recording a plot plan.

³ Mot. Award of Costs Pursuant to Rule 54(d) at 2.

⁴ E.g., Siga Technologies v. PharmAthene, Inc., 67 A.3d 330, 353 (Del. 2013); Christiana Marine Serv. Corp. v. Texaco Fuel & Marine Mktg. Inc., 2004 WL 42611, at *7 (Del. Super. Jan. 8, 2004).

Having found no special equities supporting the Motion, the costs allowed here under Court of Chancery Rule 54(d) are limited to those typical under this Rule and specifically exclude the cost of creating and recording the plot plan. To the extent the foregoing requires an order to take effect, IT IS SO ORDERED.

Sincerely,

/s/ Sam Glasscock III

Sam Glasscock III