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**IN THE SUPREME COURT OF THE STATE OF DELAWARE**

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| BRUCE A. HILER, as Trustee of BRUCE A. HILER DELAWARE QPRT AND ELAINE M. CACHERIS, as Trustee of the ELAINE M. CACHERIS DELAWARE QPRT,<br><br>Respondents/Counterclaim and Third-Party Plaintiffs Below - Appellants<br><br>v.<br><br>PAUL G. KUHNS AND ANNE M. KUHNS,<br><br>Petitioners/Counterclaim Defendants Below - Appellees,<br><br>and<br><br>THE CITY OF REHOBOTH BEACH, a municipal corporation of the State of Delaware, and GREGORY FERRESE, in his capacity as the City Manager of the City of Rehoboth Beach,<br><br>Third-Party Defendants Below - Appellees. | No. 576, 2014<br><br>Court Below: Court of Chancery of the State of Delaware<br><br>C.A. No. 7586-VCG |

# REPLY BRIEF FOR APPELLANTS

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## INTRODUCTION

This appeal, as detailed in the Hilers' Opening Brief, is about the Kuhns' repeated and ongoing trespasses on the Hilers' property; the City's aiding, abetting, and participation in those trespasses; and the failure of the Court below to appropriately consider and remedy those trespasses.

Unable to rebut the clear evidence of their repeated trespasses, both Appellees engage in a campaign of misdirection in their briefs. Indeed, the Kuhns spend nearly a third of their brief improperly rearguing the easement issue decided by the Court of Chancery below. Kuhns Brief at 1-13. But if the Kuhns wanted to argue that point on appeal, they should have filed a cross-appeal. They did not. Both the Kuhns and the City also try to deflect attention from many of the Hilers' arguments by myopically focusing on whether the Hilers' adequately pled certain instances of trespass. City Brief at 1-3, 13-14, 16-17, 24-26, 32. As detailed *infra*, Appellees' arguments are without merit.

The Appellees also repeatedly misstate the record below. For example, the Kuhns' answering brief claims that the Court of Chancery "found a technical trespass to occur based on [the pipes'] existence." Kuhns Brief at 13. But that statement is incorrect. The lower court's opinion makes clear that the Kuhns' trespass was predicated upon the "passage of water and the PVC [Perma-Liner] through the buried laterals." *Kuhns v. Bruce A. Hiler Del. QPRT*, 2014 WL

1292860 at *20 (Del. Ch. Mar. 31, 2014). Moreover, the record shows that the Kuhns and the City were complicit in both of these events.

In addition to the above points, the Hilers' reply addresses the following issues:

1. First, the Hilers rebut any alleged pleading deficiency and reiterate that they are entitled to the equitable relief that the Court failed to consider or award.
2. Second, the Hilers show that the City's attempts to escape liability are unavailing.
3. Third, the Hilers present record evidence that demonstrates that the Hilers anticipated a later hearing on damages and request that this Court order such a hearing.
4. Finally, the Hilers demonstrate that they are entitled to attorney's fees.

## ARGUMENT

### I. APPELLEES FAIL TO REFUTE THE HILERS' ENTITLEMENT TO AN INJUNCTION AND REMOVAL OF THE PERMA-LINER

#### A. The Appellees Misstate the Hilers' Request for Relief

Both the Kuhns and the City claim (without support) that a permanent injunction against use of the pipes is unavailable because the Hilers did not plead for a permanent injunction against use of the pipes or raise the issue until appeal. Kuhns Brief at 15, 19; City Brief at 13. Not so. In fact, within several sentences of making this argument, Kuhns Brief at 15, the Kuhns quote the Hilers' request for "a prohibition of the City using or allowing the use ... of the lines." A0815 (Hiler Reply Brief to the City's Motion for Summary Judgment). The Court of Chancery noted this request as well. A0833 (Oral Arg. 4:9-14) ("I may not allow [the pipes] to be used if there is no prescriptive easement").

Moreover, the Hilers pled for all relief "as the Court may deem just and proper" from the trespass. A0034 (Amended Third Party Complaint). Once the Chancery Court found that the City had no easement and that the Kuhns' with the support of the City had repeatedly trespassed, a permanent injunction was necessary to ensure that the trespass did not continue or re-occur. The burden of ensuring that a trespass does not continue or re-occur should not be placed on the Hilers, as the Court below has done. *See Kuhns*, 2014 WL 1292860 at *23

("Nothing in this opinion prevents the Hilers from excavating their own property and removing the laterals, assuming they are not so prevented by statute").

As to the request for an order requiring removal of the Perma-liner, both Appellees attempt to re-characterize the Hilers' requested relief. The City argues that the Hilers are seeking the removal of both lines. City Brief at 11-13. And the Kuhns claim that the Hilers did not request removal of the Perma-liner "until now." Kuhns Brief at 16. Both claims are inaccurate.

At the Summary Judgment hearing, Mr. Hiler clarified that "[w]e are not asking for the pipes . . . to be removed." A0905 (Oral Arg. at 76:5-6). In fact, the transcript reveals that Mr. Hiler narrowed his requested relief from removal of the pipes—which was pled—to the removal of the Perma-Liner. Mr. Hiler initially turned the lower court's attention to his concerns about the safety of the liner.

> MR. HILER: We are not asking for the pipes, by the way, to be removed. But I do want to point out – I mean, there clearly are trespasses. I can go through those, but I think that they are easy [to understand]. In terms of the Perma-Liner, Your Honor, what we have for this is a two-page flier that was produced in litigation . . . .

A0905 (Oral Arg. at 76:5-11).

Because of an interjection by the Vice Chancellor, Mr. Hiler was unable at that moment to contrast complete removal of the pipes with removal only of the Perma-liner before another issue arose—the question of removal for a damages hearing—but as soon as this issue was clarified, Mr. Hiler's discussion quickly

returned to Perma-Liner removal: "[w]e do not necessarily want the pipes removed, but the Perma-liner is a source of distress and a potential health concern." A0908 (Oral Arg. at 79:12-14). These statements, taken in context, are consistent with Mr. Hiler's later discussion regarding removal of the Perma-Liner and position on appeal:

> [We] do have a right to have [the Perma-Liner] removed under cases like [*Gordon v. Nat. R.R. Passenger Corp.*, 1997 WL 298320 (Del. Ch. Mar. 19, 1997)]. It can be removed. Maybe the wall has to be taken out. The [Hilers], in fact, will remove it themselves if the Court doesn't order the removal, as it has ordered the removal of things that were placed on property that didn't deserve to be there in Gordon v. Railroad.

A0911 (Oral Arg. at 82:18-24). The Hilers' position was clear from the record: they initially requested removal of the pipes, but they narrowed that request at oral argument to removal of the Perma-Liner. Unfortunately, the court failed to consider this request.

This Court should order removal of the liner without balancing of equities or other proceedings. *See Gordon*, 1997 WL 298320 at *8-9 (citing Restatement (Second) of Torts § 929 (1979)). Moreover, removing the cause of a trespass has long been recognized as a necessary and appropriate remedy by Delaware courts, and in this case, removal of the Perma-Liner is both necessary and appropriate to stop the continuing trespass on the Hilers' property. *See, e.g.*, *Hollingsworth v. Szczesiak*, 84 A.2d 816 (Del. 1951).

Finally, it is worth noting that the City does not argue or contest the need for injunctive relief against future use of the pipes. Instead, in footnote 41 of its brief, the City claims "the water has been disconnected, new laterals will run to Lake Drive and no one is now using the sewer line." The City fails to mention, however, that neither it nor the Kuhns took action for months after the lower court ruled that it had no easement and that the insertion of the Perma-liner and flow of water onto the Hilers' property were trespasses. Indeed, the trespass continued unabated, until the Hilers' counsel demanded that the water be turned off and that the Perma-liner be removed. The City's actions in this case demonstrate exactly why a permanent injunction is warranted and necessary.

**B. The Kuhns' Legal Arguments Miss the Mark**

The Kuhns spend considerable time attempting to distinguish *Hollingsworth.* And while they identify a number of superficial differences, none of the proffered differences excuse the Kuhns' trespass or justify denial of the relief requested by the Hilers. Indeed, it matters little that the pipes were subterranean while the garage in *Hollingsworth* was not, or if the pipes existed longer than did the garage, or whether the garage did not adhere permanently to the property while the Perma-Lining did adhere to the pipes. The continuing trespass at issue cannot be excused simply because the pipes themselves existed before the Hilers purchased their property.

The logic of *Hollingsworth* applies here: he who knowingly and despite protests invades and alters his neighbor's property through self-help must return that property to its original condition, even if doing so is costly. *See Hollingsworth*, 84 A.2d at 822. And while the Kuhns are correct that the "original condition" of 100 St. Lawrence Street prior to their trespasses included the water and sewer pipes in the ground, they fail to acknowledge that the "original condition" did not include the Perma-Liner. Kuhns Brief at 19. Thus, so long as the Perma-Liner remains in the ground, the Hilers' property *is not* in its original condition. If the Kuhns are correct that they have permanently adhered the Perma-Liner to the Hilers' sewer pipe, then that is unfortunate – but the Kuhns and the City "took their chances" and cannot now complain, even if they "suffer[] serious damage." *Hollingsworth*, 84 A.2d at 822.

The Kuhns attempt to mitigate their liability by invoking the City's approval of their actions. Kuhns Brief at 31-33. But the Kuhns merely demonstrate that the City aided and abetted their trespass and is liable as such. Opening Brief at 15-20. And the fact that the Kuhns may have believed the City does not excuse their trespass nor does it relieve them from the consequences of it. *See Williams v. Manning*, 2009 WL 960670 at *8 (Del. Super. Ct. Mar. 13, 2009) (citing Restatement (Second) of Torts, § 164 cmt. a (1965)).

## II. THE CITY'S LIABILITY FOR THE TRESPASSES IS CLEAR

### A. The Hilers' Additional Trespass Allegations Are Not Barred by a Pleading Deficiency.

The City argues that that the Court below refused to consider any claims against it save those specifically alleged in the complaint, *i.e.*, the January 12, 2012 Perma-lining and the turning on of the City water. The City relies on a footnote in the opinion to claim that the Court below found that failure to plead them was a fatal flaw. City Brief at 13-14. But the City is wrong. The text of the opinion makes it clear that the Court did not rely on a pleading flaw and that all parties were well aware of the Hilers' trespass claims: "[d]uring briefing, the Hilers—relying on the City Defendants' conduct between 2009 and 2012—argue multiple trespasses by the City Defendants, as well as several instances when the City Defendants allegedly aided and abetted [the] trespasses of the Kuhns." *Kuhns*, 2014 WL 1292860 at *20 n. 186. In fact, the Court of Chancery did not give any legal or factual support for its decision to consider only the January 2012 conduct.

Furthermore, if the Court below based its opinion on a failure to plead each trespass specifically, that would itself warrant reversal by this Court because Delaware is a notice pleading state. *VLIW Tech., LLC v. Hewlett-Packard Co.*, 840 A.2d 606 (Del. 2003). The Hilers clearly pled that the City trespassed and aided and abetted trespasses, and therefore the City was on notice that the Hilers would

seek to hold them liable.[1] As such, the City's conflation of a failure to plead a legal theory with failure to plead all factual instances supporting that theory is contrary to Delaware law. *See id.* at 611 ("[A] plaintiff need not plead evidence"). Therefore, this Court should find the May 2009 conduct constituted trespasses by the Kuhns and hold the City responsible for the same.

**B. The City Fails to Refute its Liability for Trespass**

Neither Appellee contests the Court of Chancery's holding that turning on the water and inserting the Perma-liner in January 2012 constituted trespasses onto the Hilers' property. Likewise, neither Appellee contests that the May 2009 actions culminating in the insertion and removal of a rigid pipe also constituted trespasses. The only issue on appeal is whether the Court below erred by failing to hold the City liable for its role in the May 2009 and January 2012 trespasses.

The City attempts to cast itself as an innocent bystander, but the Kuhns admit that the City directly aided and abetted their trespasses. They "were told by the City of Rehoboth Beach that [the Kuhns] had every right to use the pipes, and further that these pipes were where the City mandated connection to its water and sewer utility systems." Kuhns Brief at 32. The Kuhns were "expressly directed" to use the pipes, which the City claimed to be "the sole means of connecting to the

[1] It would be particularly inequitable for the Court to refuse to consider the May, 2009 conduct, because that trespass was hidden from the Hilers until they learned of it during discovery. Opening Brief at 18; A0524-28 (Hiler Dep. at 99-103).

City's water and sewer utilities." *Id.* at 33; *id.* at 28 (the pipes sat "in a location that was mandated by the City of Rehoboth"). These statements reveal the true arrangement – the City directly aided, abetted, counselled, commanded and even assisted in the Kuhns' trespass. *See* Restatement (Second) of Torts § 876 cmt. a, c ("Parties are acting in concert when they act in accordance with an agreement to cooperate in a particular line of conduct . . . . The agreement need not be expressed in words and may be implied and understood to exist from the conduct itself").

The Kuhns' assertions are consistent with the uncontroverted record. Both the City's letter to the Hilers and the emails between the City and the Kuhns in May 2009 outline the City's complicity in and approval of the Kuhns' conduct. A0073-79; A0081 (parties' correspondence, letter to the Hilers from the City, and email from the Kuhns' attorney to the City's attorney). The City's September 2011 letter also sent a clear message that the City claimed a right to the laterals running across the Hilers' property to satisfy its service requirement to the Kuhns. This letter was not a summary of the facts, but the culmination of a multi-year effort to permit access to the Hilers' property – despite the lack of an easement and the Hilers' objection. A0095-97 (Certification Letter); A0386, A0407-410 (Hiler Motion for Summary Judgment). Indeed, the City Manager testified to the City's position that it fulfilled its obligation to provide the Kuhns with water and sewer service through the pipes. *E.g.*, A0383 (Hiler Motion for Summary Judgment).

Finally, the City failed to refute the Hilers' argument that the Court of Chancery abused its discretion when it failed to apply correctly the test for substantial assistance to the January, 2012 trespasses. *See Patton v. Simone*, 1992 WL 183064 at *12 (Del. Super. Ct. Dec. 14, 1992). The Court below recited the factors for substantial assistance of a tort but failed to balance or apply these factors to the facts. *Kuhns*, 2014 WL 1292860 at *21-22. These failures constitute clear error and warrant reversal. Accordingly, this Court should hold that the City is jointly liable for the May, 2009 and the January, 2012 trespasses.

**C. The Municipal Tort Claims Act Is Not Before This Court**

The Court of Chancery did not discuss the Municipal Tort Claims Act ("MTCA"), 10 *Del. C.* § 4011, as it found that the City was not liable for the trespasses claimed. *See Kuhns*, 2014 WL 1292860 at *19 n. 183. This issue therefore is not before this Court on appeal. And while the City Appellees would like for the MTCA to immunize them wholesale, there is no question that the MTCA does not bar claims for equitable relief, such as the request herein for a permanent injunction and an order of removal of the liner. *See Judge v. City of Rehoboth Beach*, 1994 WL 198700 at *6 (Del. Ch. Apr. 29, 1994) (denying MTCA protection for equitable relief and award of attorneys' fees). But this Court need not decide the MTCA question; it is better heard on remand after appropriate briefing.

## III. TRANSFER FOR DETERMINATION OF DAMAGES IS PROPER

### A. The Motions for Summary Judgment Below Did Not Submit or Address Damages Amounts.

The City Appellees incorrectly claim that "[t]he parties agreed that the matter would be entirely resolved on cross-motions for summary judgment, and that was reflected in the scheduling order." City Brief at 26. Similarly, the Kuhns inaccurately claim that "[a]ll facts and issues were completely stipulated" for summary judgment below. Kuhns Brief at 4. Nothing could be farther from the truth. The parties merely stipulated to a set of documents that would, for the purposes of those motions, represent the entire world of information for the issues presented in the motions, and the letters transmitting those documents to the Court claim nothing to the contrary.

Moreover, it is evident from the lower court's proceedings and the scheduling order itself that the parties anticipated a trial or later hearing to present damages evidence. For example, the arguments in the motions below only seek a finding of liability and not a determination of the amount of damages. *See, e.g.*, A0401-405 (Hiler Motion for Summary Judgment, asking the Court of Chancery to find the Kuhns liable for compensatory and punitive damages). In addition, the scheduling order explicitly provides the option for a later trial, where damages evidence would have been presented. B009-10 (Pretrial Scheduling Order).

Furthermore, neither the Kuhns nor the City cite any legal authority to support their position that a request for transfer to the Superior Court must be included in the pleadings, nor could they, as their argument is unfounded. *See Nicholas v. Nat'l Union Fire Ins. Co. of Pittsburgh, Pa.*, 74 A.3d 634 (Del. 2013) (permitting *nunc pro tunc* filing in Superior Court to allow subsequent transfer under 10 *Del. C.* § 1902). Indeed, considering that one of the primary justifications of § 1902 is its "remedial nature," *id.* at 636, requiring a party to plead or affirmatively argue for a transfer would contradict the legislative intent to "liberally construe[]" that section "in the interests of justice." 10 *Del. C.* § 1902.

Here the Hilers consistently, repeatedly, and expressly requested transfer to the Superior Court in their briefing on the motions for summary judgment. A0401, A0405 (Hiler Motion for Summary Judgment at 32 n. 53, 36 n. 66-67); A0816-17 (Hiler Reply Brief to City at 29-30); A0779 (Hiler Reply Brief to Kuhns at 19).

**B. Damages for Annoyance and Distress are Appropriate for a Hearing.**

Appellees claim the Hilers raised damages issues that they did not plead and that the Hilers failed to name a damages expert to testify. City Brief at 23-27; Kuhns Brief at 23-25. But the Hilers are not aware of any Delaware precedent—and the Appellees have cited none—that holds that damages for annoyance and distress must be pled with specificity. Moreover, no expert report or testimony is required for annoyance and distress damages; the Hilers themselves would have

testified to their annoyance and distress during a trial or damages hearing. *See Williams*, 2009 WL 960670 at *10 (allowing damage award for annoyance and distress based on testimony from plaintiffs).

Furthermore, the Kuhns are incorrect when they assert that there can be no damages for annoyance and distress because the property is owned by trusts. On the contrary, a trust is not an entity and lacks the capacity to own property. The Hilers—not the Trusts—own and hold both the title and the possessory interest to the property, subject to certain trust obligations. *See Fulweiler v. Spruance*, 222 A.2d 555 (Del. 1966); *Bodley v. Jones*, 32 A.2d 436 (Del. 1943). This was indicated below and no issue was raised. A0371 (Hiler Motion for Summary Judgment at 2 n.1). Accordingly, Appellants are not trusts.

**C. The Court Should Award Punitive Damages**

The Kuhns' response to the Hilers' request for punitive damages is another attempt at misdirection. First, they complain that the Hilers' pleadings did not request a transfer for a punitive damages hearing. Kuhns Brief at 26. As discussed *supra*, transfer under 10 *Del. C.* § 1902 need not be pled. Second, they protest that the scheduling order does not reserve punitive damages. Kuhns Brief at 26. The Hilers are aware of no such legal requirement, and in any event, it would be strange indeed for a court of equity to include punitive damages in its scheduling order. Finally, they claim that the Hilers' discovery included no expert evidence to

support damages. *Id.* at 26-27. But expert testimony is not even required to establish annoyance and distress damages, much less punitive damages.

The Kuhns also claim that "[Mr. Hiler] cannot seek punitive damages for pipes that were in Rehoboth before he was." *Id.* at 27. But as noted *supra*, the Hilers' trespass claim has nothing to do with how long the pipes have been in place or who initially installed them. All that matters is what happened once the pipes were discovered six years ago: repeated, surreptitious trespasses—including the continuing trespass of the Perma-liner—committed in the absence of an easement and with knowledge of the Hilers' objections.

It is not necessary to detail once again the Kuhns' and the City's multi-year litany of offenses. *See* Opening Brief at 29-30; A0404 (Hiler Motion for Summary Judgment). Neither Appellee contests that the conduct occurred. Suffice it to say, the Appellees knew that there was no record of an easement, they had no permission to do what was done on the Hilers' property, and in the Kuhns' case, they even promised Mr. Hiler that they would take no action on the pipes without consulting with him. Opening Brief at 29-30. That the Appellees nevertheless acted is the strongest testament to their "I don't care" attitude. *Williams*, 2009 WL 960670 at *12. And it is that persitent attitude—in conjunction with Appellees' recividism—that justifies punitive damages in this case.

## IV. THE APPELLEES MUST BEAR APPELLANTS' ATTORNEYS' FEES

The record shows that the Hilers' had no choice but to defend their property rights in court, *after* the City and the Kuhns repeatedly trespassed on their property despite not having a legal easement or any evidence of a prescriptive easement. In light of this, it is unclear how the "source of the legal expense" stems from the Hilers. City Brief at 32. In fact, the claim that the Hilers "compelled the Kuhns to litigate" by "just wait[ing] to be sued" is bizarre and contradictory. Kuhns Brief at 29. Moreover, the Kuhns cannot explain how the Hilers "laid [sic] in wait" by protecting their own possessory interests in 100 St. Lawrence Street. *Id.* at 28. The pipes were on the Hilers' property; and in light of the Court of Chancery's ruling, it seems clear that the pipes *are* the Hilers' property.

The Hilers would have been fully entitled to engage in self-help by capping them, removing them, or taking any other action consistent with ownership of their land – but they did not. Failure to award the Hilers their attorneys' fees, in effect, punishes them for defending their property rights in court in the face of an aggressive trespasser acting under the cloak of the City's illegal sanction and is contrary to the policy against self-help set by this Court.

In light of all the above, it is appropriate that the Kuhns' bear the Hilers' attorney's fees. As detailed in the Hilers' opening brief, both *Black v. Staffieri*, 2014 WL 814122 (Del. Feb. 27, 2014) (TABLE) and *H&H Brand Farms, Inc. v.*

*Simpler*, 1994 WL 374308 (Del. Ch. June 10, 1994) establish that attorney's fees are warranted here. The Kuhns' efforts to distinguish these cases fail. Their response to both cases is that they "continued to use the pipelines in the same location, and in the same manner, as they existed at the time Hiler acquired the property." Kuhns Brief at 31. But, this statement is irrelevant and false—no previous tenant installed a permanent fixture such as the Kuhns' Perma-Liner, and certainly not in the face of objections of the property owner. In addition, these cases make it clear that inertia of use does not correct an offending practice, especially when the user has notice that he does not have an "uncontroverted legal right" for that use. *H&H Brand*, 1994 WL 374308 at *6. It does not matter how old the pipes are or whether they had been used before. All that matters are the Kuhns' "totally unjustified" actions following the discovery of the pipes in 2009. *Scion Breckenridge Managing Member, LLC v. ASB Allegiance Real Estate Fund*, 68 A.3d 665, 687-88 (Del. 2013).

Additionally, the Kuhns stress that "[t]he Perma-Liner did not alter the exterior of the sewer line," and that it "did not even touch the earth beneath Hilers' property." Kuhns Brief at 31-32. But these facts are irrelevant. It was a trespass, and the policy behind shifting attorneys' fees is clear: to punish those who take the law into their own hands, and to avoid breaches of the peace.

Finally, the Kuhns allege that *Black* and *H&H Brand* are distinguishable because the City said that the Kuhns "had every right to use the pipes." *Id.* at 32. The City similarly argues that "it was not bad faith for the City Defendants to assume that [the Kuhns'] use was legally valid." City Brief at 31. But even a mistaken good faith belief of ownership will not excuse a trespass. *See*, *e.g.*, *Williams*, 2009 WL 960670 at *8 (citing Restatement (Second) of Torts § 164 cmt. a). Even existence of legal advice would not justify denial of this relief. *H&H Brand*, 1994 WL 374308 at *5. In short, the Appellees lacked an "uncontroverted legal right" to the pipes and displayed "wanton disregard" for the Hilers' property rights. *Id.* at *6. Accordingly, the Hilers ask the Court to order an award of attorneys' fees and remand to the Court of Chancery for a determination of that amount.

## CONCLUSION

Ultimately, the Appellees' procedural misdirection and attempt to re-characterize of the record cannot distract the Court from the substance of this case. The Hilers ask the Court to reaffirm a central tenet of common law: an owner's right to peaceful possession of his land. The Kuhns have repeatedly invaded the Hilers' rights with clear assistance from the City, which has itself invaded the Hilers' rights without remorse. And the invasion continues to this day. Accordingly, the Hilers ask this Court: (1) to review the record and correctly hold that the Kuhns trespassed in May, 2009, that the City trespassed and aided and abetted the Kuhns' trespasses, that the City is liable as a joint tortfeasor with the Kuhns for those trespasses, and that the City separately trespassed by turning on the water and running City water to the Kuhns' property in January 2012; (2) to order entry of a permanent injunction against use of the lines by the Kuhns, the City, and any future owner of the Kuhns' property; (3) to order the Kuhns and the City be jointly and severally responsible for removal of the Perma-Liner and for Appellants attorneys' fees; and (4) to remand to the Court of Chancery, with an instruction to transfer the case to the Superior Court for a hearing on damages, including punitive damages.

*/s/ Daniel A. Dreisbach*

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