FAYETTE CIRCUIT COURT
CIVIL BRANCH
FOURTH DIVISION
CASE NO. 17-CI-2156

BEHR PROPERTIES, LLLP, et al. PLAINTIFFS

v. **ORDER GRANTING TEMPORARY INJUNCTION IN FAVOR OF DEFENDANTS**

ASHLAND AVENUE PROPERTIES, LLC, et al. DEFENDANTS

This cause having come on for special hearing at the request of Plaintiff on Tuesday, June 20, 2017, on Plaintiffs' Motion for Temporary Restraining Order/Injunction; and also on Defendants' Cross-Motion for Temporary Injunction under CR 65; the Court having conducted an evidentiary hearing, including the taking of testimony and introduction of Defendants' Exhibits 1-11, and having fully reviewed the record, and having heard the arguments of counsel and having reviewed the post hearing filings; and the court being otherwise sufficiently advised; the Court hereby ORDERS that the Plaintiff's Motion for Temporary Restraining Order and Injunction is OVERRULED/DENIED. The Defendant's Cross-Motion for Temporary Restraining Order/ Injunction is SUSTAINED/GRANTED.

For the reasons stated more fully on the record which is incorporated by reference, the Court enters the following FINDINGS OF FACT, CONCLUSIONS OF LAW, AND TEMPORARY INJUNCTION in support of its ruling.

FINDINGS OF FACT

1. Defendants are the long-standing owners of real property in fee simple located in the Chevy Chase area of Lexington, Kentucky which is known as John's New Classic Shoes store and its parking lot. A Google Maps aerial photograph introduced as part of Composite Exhibit 2

shows the John's New Classic Shoes store that fronts onto South Ashland Avenue and the access to its parking lot is from South Ashland Avenue. A survey plat and exhibit (Exhibits 9 & 10) were introduced that show the property boundaries of Defendants' property. Defendants further demonstrated by drawing with a highlighter the location on their property of their intended fence or barrier to be constructed.

2. Plaintiff Behr Properties, LLP is the recent (2015) purchaser of nearby real property that was formerly a night club (and before that a theater) that fronts onto Euclid Avenue at 815-817 Euclid Avenue. Plaintiff Behr also recently purchase a narrow strip of land now delineated as 813 Euclid Avenue that is approximately 6 feet wide (per Plaintiff's arguments at hearing) and abuts Plaintiffs' 815 building (now being renovated to be utilized as a restaurant).

3. Defendants' parking lot has an "apron" from South Ashland Avenue which apron leads mostly onto only Defendants' parking lot; but there is an extra few feet of apron that leads onto property in the parking lot that is owned by other businesses (or their property owners) that are mentioned in the Complaint (Domino's Pizza).

4. Plaintiff Behr has recently installed doors on the side of the building that did not previously exist, including a large commercial "garage" type rollup/down door in their building, despite having no right or claim to use of the Defendant's parking lot or apron, or any part of Defendants' property to cross through. Plaintiff Behr nor its predecessors had access rights through Defendants' property because there was not points of ingress or egress on Plaintiff's building that required pedestrian or vehicular access prior to just a few months ago. Defendants introduced as Composite Exhibit 2 certain photographs depicting the property, apron, and drive and side of Plaintiff's building over the years to establish the recent installation of the side doors on the Plaintiff's building.

5. Defendants' property includes the majority of the paved parking lot from left to right which it owns in fee simple. This is evident by the survey pin showing in the Exhibit 2 photograph(s) at a point close to the apron.

6. While Plaintiffs hold no fee simple property rights in the parking lot for access, nor do they have any written access rights, Plaintiff and its agents have been trespassing for a significant period of time during their renovation effort.

7. Because the property line is not "down the center;" of the access apron as it is viewed from standing in Ashland Avenue, rather, the majority is owned by Defendants, Defendants have oral agreements with Domino's and CC Prep (801 and 807 Euclid) for them to use the necessary portion of Defendant's parking lot property for access to the rear of the Domino's and CC Prep property for their limited access through their rear doors.

8. Plaintiffs have illegally and improperly used Defendants' property for construction access without Defendants' permission; however, even if Plaintiffs have permission, that fact weighs against a finding of prescriptive easement, as shown below.

9. This Motion and Cross Motion stems from Plaintiffs' allegation that Defendant Marshall, on May 22, 2017, expressed her purported intent to install a barrier or fence on and within Defendants' own property. This timing weighs heavily against a finding of irreparable harm, for if the Plaintiffs truly believed they were going to suffer imminent harm, they should have moved for relief much earlier. Regardless, Defendants may take any action with their fee simple property that they desire.

10. Defendants seek and desire to place a fence (and/or bollards) near and along the rear of their parking lot property, for a variety of purposes. The point and purpose of this installation would be to protect Defendants' vehicles from being hit/damaged by Plaintiffs'

construction vehicles, which has occurred in the past, and which would happen in the future based on the continued trespass of Plaintiffs and their agents if Plaintiffs were not enjoined.

11. Plaintiffs rely heavily on a purported "15-year" history of using the apron and drive at issue. This is simply untrue and has not been proved by Plaintiffs and specifically rebutted by Defendants. Although other adjacent properties used the apron, 813 and 815-817 Euclid Avenue only began using the drive once construction commenced on their properties, in or about 2016. There was never vehicular access to the nightclub (or theater before that) on the South Ashland side of the building. As is obvious from the Google Maps photos (Exhibit 2) of the view of the Defendant's parking lot and there for the side of the Behr building, there was no side access garage door in 2007 and in fact none in 2015. See Exhibit 2, Google Maps. Plaintiff's only purchased the building in 2015 and it only appears in the 2017 photo/image. Therefore, the 15-year-requirement for some type of adverse possession or prescriptive easement is not met. This becomes a moot point, however, as shown below, based on Plaintiffs' own allegations that the use was "peaceful" because a claim of adverse possession must be based on hostile use, which Plaintiffs conceded at the hearing there was no hostile use over the necessary time period.

12. Plaintiffs referred to a letter, dated August 28, 2015, signed by John Sensenig purporting to authorize use of 10 parking spaces. The letter itself, if taken on its face, also negates any claim for a prescriptive easement because it purports to give Plaintiffs permission to use the property – for parking in existing parking spots, not for ingress and egress for construction purposes and blocking the daily operation and use of the Defendants' business. Therefore, this letter does not assist Plaintiff in their efforts for injunctive relief related to access.

13. Defendant testified that this parking area is not built or designed for heavy traffic from construction, deliveries or for high traffic volume as a thoroughfare. Defendants introduced

as Composite Exhibit 2 and Composite Exhibit 11 pictures showing the complained of activity on several days during the last three months.

14. Defendants are solely responsible for property taxes and maintenance of the property in issue.

15. In anticipation of wrongfully using the property for construction deliveries and usurping the apron and drive, Plaintiffs have recently filled the property located at 813 Euclid with gravel. This gravel has caused Defendants' property to hold water and CC Prep property to flood because the 813 Euclid Avenue property was previously grass and utilized for storm drainage and absorption in the area. The gravel is also interfering with parking space owned by Defendants and a large puddle of water now constantly remains in the paved parking lot owned by Defendants because of the grading change created by Plaintiff.

16. There is no construction easement in place, and Plaintiffs have ignored a cease and desist letter sent on or about May 10, 2017. Plaintiffs also permit their employees, agents and contractors to park vehicles and congregate on the side of the 811, 813, and 815 buildings, which is unsightly for Defendants' business operation, restricts Defendants' use of their private property, restricts the Defendants' patrons' parking and access, and further restricts Defendants' delivery services from accessing and delivering goods. Defendant Marshall testified that all of the actions of the Plaintiffs are resulting in damage to Defendants, their goodwill and their business reputation.

17. Plaintiffs moved for a temporary restraining order/injunction to prevent Defendants from installing bollards or a fence on Defendants' own property, and Defendants cross moved for a temporary injunction enjoining Plaintiffs from any unauthorized use of Defendants' property or illegal trespass.

CONCLUSIONS OF LAW

A. THE STANDARDS FOR ISSUANCE OF A TEMPORARY INJUNCTION OR TRO ARE NOT MET BY PLAINTIFFS IN THIS CASE, BUT RATHER, ARE MET BY DEFENDANTS

1. Under Civil Rule 65.04(1):

> A temporary injunction may be granted during the pendency of an action on motion if it is clearly shown by verified complaint, affidavit, or other evidence that the movant's rights are being or will be violated by an adverse party and the movant will suffer immediate and irreparable injury, loss, or damage pending a final judgment in the action, or the acts of the adverse party will tend to render such final judgment ineffectual.

2. Kentucky courts, in interpreting Civil Rule 65.04, have held:

> [A]pplications for temporary injunctive relief should be viewed on three levels. First, the trial court should determine whether plaintiff has complied with CR 65.04 by showing irreparable injury. This is a mandatory prerequisite to the issuance of any injunction. Secondly, the trial court should weigh the various equities involved. Although not an exclusive list, the court should consider such things as possible detriment to the public interest, harm to the defendant, and whether the injunction will merely preserve the status quo. Finally, the complaint should be evaluated to see whether a substantial question has been presented. If the party requesting the relief has shown a probability of irreparable injury, presented a substantial question as to the merits, and the equities are in favor of issuance, the temporary injunction should be awarded. However, the overall merits of the case are not to be addressed in CR 65.04 motions.

Maupin v. Stansbury, 575 S.W.2d 695, 699 (Ky. App. 1978).

i. ***Plaintiffs have not shown irreparable harm/inadequate remedy at law, and it is Defendants who will suffer irreparable harm in the absence of injunctive relief.***

3. Significantly, while their Memorandum and supporting affidavit alleges irreparable harm in a cursory fashion, these Plaintiffs have not cited any case law to show that the denial of an easement constitutes "irreparable harm." The Plaintiffs seek a restraining order to prevent Defendants from installing bollards or fencing **on Defendants' own property**. In the Affidavit of

Thomas Behr, Behr asserts only that Plaintiffs and their tenants will suffer "economic loss" which is "unascertainable" and "incalculable."

4. First, Plaintiffs have failed to establish how activity of Defendants of construction a fence or barrier on Defendants' own property could be or should be enjoined by a court of law.

5. Second, courts have made clear, however, that even difficulties in determining damages will not transform every case into one in which injunctive relief is appropriate. The Sixth Circuit has explained:

> A plaintiff's harm from the denial of a preliminary injunction is irreparable if it is not fully compensable by monetary damages. That is, a court of equity will not step in to issue a preliminary injunction if there is "an adequate remedy at law."
>
> *****
> "The possibility that adequate compensatory or other corrective relief will be available at a later date, in the ordinary course of litigation, weighs heavily against a claim of irreparable harm." "An 'adequate remedy at law' is a remedy that is plain and complete and as practical and efficient to the ends of justice as the remedy in equity by injunction."

Stansbury v. Hopkins Hardwoods, Inc., 2016 WL 3619616, at *8 (W.D. Ky. June 24, 2016) (internal citations omitted).

6. *See also Campbell v. Irvine Toll Bridge Co.*, 190 S.W. 1098, 1099 (Ky. 1917) ("It is, however, a well-recognized rule in this jurisdiction, as elsewhere, that where damages would fully compensate for the injury, and the defendant is solvent and able to respond, no injunction should issue. In such case the plaintiff must resort to an action at law for the damages sustained").

7. Here, money damages would fully compensate these Plaintiffs for any harm caused by the building of the fence on Defendants' own property – which amount is $0. This is not about parking spaces as Behr properties indisputably has none in Defendants' parking lot. Plaintiffs and their employees and customers can certainly park on the public street parking available directly in front of the Behr property and all around the block on both sides of the street. They can further

pay to park at the Chevy Chase Plaza garage, located across the street on Euclid Avenue. They could even seek to lease parking places for market rates like most businesses would do in their situation rather than filing lawsuits to attempt to strong-arm and steal property from their business neighbor. The Plaintiffs can then attempt to prove their damages from having to secure parking elsewhere or attempt to recover lost profits, which only need to be proven under Kentucky with "reasonable certainty;" precise mathematical certainty is not required. *See, e.g., Pauline's Chicken Villa, Inc. v. KFC Corp.*, 701 S.W.2d 399 (Ky. 1985) (lost profits could be established with reasonable certainty in fried chicken franchise dispute). The assertion by Thomas Behr, through Affidavit, that any construction on the property will not be able to be finished if the fence is built is simply self-serving speculation and certainly cannot be blamed on Defendants.

8. These Plaintiffs have an adequate remedy at law – money damages – and injunctive relief must be denied for this reason alone.

9. On the other hand, Defendants have suffered and will continue to suffer irreparable harm by loss of actual business and injury to reputation and goodwill, and are therefore entitled to injunctive relief.

10. In *Holley Performance Products, Inc. v. Smith-CNC China Network Company*, 2006 WL 3256743 (W.D. Ky. 2006) (unpublished), the plaintiff alleged that the defendant converted tooling the plaintiff had purchased from the defendant. The defendant had removed the tooling from a Chinese factory, alleging that it had the right to do so by virtue of a statutory molder's lien. The Court granted a preliminary injunction directing the defendant to immediately return the tooling to the plaintiff. It explained that without the tooling, the plaintiff would be "unable to fulfill the orders of its longstanding customers." *Id.* at *4. The Court explained:

> The Sixth Circuit has held that an action which puts an injured party's reputation at risk may lead to "irreparable harm." *Lorillard Tobacco Co. v. Amouri's Grand*

> *Foods, Inc.*, 453 F.3d 377, 381-382. (6th Cir.2006). "An injury is not fully compensable by money damages if the nature of the plaintiff's loss would make damages difficult to calculate. In general, . . . injury to reputation (is) difficult to calculate." *United States v. Miami University,* 294 F.3d 797, 819 (6th Cir.2002).

Id. at *4.

11. The Court also noted that any harm to the defendant, contrarily, was a "potential financial injury" that could be "fairly remedied by the judicial process." *Id. See also Invesco Institutional (N.A.), Inc. v. Johnson*, 500 F.Supp.2d 701, 714 (W.D. Ky. 2007) ("The loss of customer goodwill often amounts to irreparable injury because the damages flowing from such losses are difficult to compute"); *Marilyn Manson, Inc. v. New Jersey Sports & Exsposition Authority*, 971 F.Supp. 875, 890 (D. N.J. 1997) (Plaintiffs, which included concert promoters and rock bands whose performances defendants had cancelled, had shown irreparable injury warranting preliminary injunction; irreparable harm included "loss to reputation in the case of the promoters, and reduced public exposure in the case of the artists"); *Partenza v. Brown*, 14 F.Supp.2d 493, 498-99 (S.D.N.Y. 1998) (Actions of holdover trustees created confusion damaging the reputation of the elected trustees, which satisfied the irreparable injury requirement); *Fitzgerald v. Mountain Laurel Racing, Inc.*, 607 F.2d 589 (3d Cir. 1979) (Harness racing driver had shown irreparable injury "to his business and reputation" warranting injunctive relief).

12. Here, Defendants will suffer irreparable harm if Plaintiffs are permitted to continue to wrongfully utilize their property, including through loss of customer goodwill and business due to Plaintiffs' unsightly activities and continued wear and tear on the rear access; constant flooding of Defendants' property due to the gravel; and intangible and irreparable loss and harm from continuing trespass on Defendants' property, which is owned by Defendants in fee simple and which Defendants should be able to deal with as they see fit.

ii. Plaintiffs have not shown a likelihood of success on the merits on their claim that an easement exists; therefore, the merits weigh in favor of Defendants and Defendants should be granted injunctive relief.

13. Plaintiffs' first contention is that they acquired an easement by prescription in the apron and drive. Plaintiffs concede that there is no writing that could establish an express easement on Defendants' property. Complaint, para. 23. The claim for prescriptive easement fails as a matter of law because these Plaintiffs have asserted – though erroneously -- and pled that the possession was "**peaceable**" for at least fifteen (15) years. If their allegation is believed, this negates any claim of prescriptive easement as a matter of law because the possession must be "hostile" under a claim of adverse possession. One Court explains:

> Continuous, uninterrupted use of a passway without interference for 15 years or more raises a presumption the use was under a claim of right and the burden shifts to the opposing landowner to present evidence to rebut the presumption showing it was merely permissive. However, it is well-established that **if the right to use a passway at its inception is permissive, the existence of a prescriptive easement or even a presumption of a claim of right does not arise unless there has been some distinct and positive act of assertion of right made clearly known to the owner of the servient tenement. The right to use a passway as a prescriptive easement cannot be acquired no matter how long the use continues if it originated from permission by the owner of the servient tenement.**

Cole v. Gilvin, 59 S.W.3d 468, 475–76 (Ky. Ct. App. 2001).

14. Here, Plaintiffs rely on a letter dated August 28, 2015, from John Sensenig, the owner of John's Run/Walk Shop. The handwritten letter purports to give Plaintiffs the permission to use ten (10) parking spaces belonging to John's. This letter negates any claim of hostile possession as required for a prescriptive easement. Plaintiffs have not, and cannot, show a likelihood of success on the merits where they have pled the exact opposite of what the law requires to state a claim. The presumption of a right does not arise unless there has been some distinct and positive "act of assertion of right made clearly known to the owner of the servient tenement." Plaintiffs have not pled any such act, instead relying only on their alleged *permissive* use of the

purported easement for over 15 years by them and their predecessors in title. Again, this is not what the law requires for a prescriptive easement and any claim fails as a matter of law.

15. Likewise, Plaintiffs' claims to an easement by necessity fail as a matter of law. "The three prerequisites to creation of an easement or way of necessity are (1) unity of ownership of the dominant and servient estates; (2) severance of the unity of title by a conveyance of one of the tracts; and (3) necessity of the use of the servient estate at the time of the division and ownership to provide access to the dominant estate. While necessity is *one* factor relevant to determining the intent of the grantor to grant a quasi-easement, necessity of access is the primary factor for the existence of a way of necessity. A greater degree of necessity is required to create an easement by necessity than for a quasi-easement based on prior use. As opposed to the "reasonable" necessity associated with quasi-easements, a requirement of "strict" necessity has traditionally applied to easements or ways of necessity. Strict necessity has generally been defined as absolute necessity such as where property is landlocked **or otherwise inaccessible**." *Carroll v. Meredith*, 59 S.W.3d 484, 491 (Ky. Ct. App. 2001) (emphasis added). This is not the case herein.

16. In *Vance v. Rose*, 2010 WL 2867721 (Ky. App. 2010), the Vances acquired a 14 acre tract adjacent to 69 acres they already owned. The 69 acre tract already had access to a road. The 14 acre tract was previously landlocked and therefore had an easement by necessity across a neighbor's property to access a road. The Vances attempted to argue that the mountainous terrain made it difficult to reach their 14 acre tract from their pre-existing 69 acre tract; therefore, the easement from the 14 acre tract across the neighbor's property should remain intact. The Court of Appeals disagreed, holding:

> Because the 14-acre tract is now part of the 83-acre tract, the question is not whether the Vances have access to the 14-acre tract, but whether they have access to the 83-acre tract. An easement of necessity is implied when a landowner cannot access his property. Such an easement is not implied when a landowner cannot travel from

> one part of his property to another simply because the terrain prevents it. The Water District map shows a number of roads leading into the 83-acre tract from Herman Vanover Road north of the 18-acre tract. Therefore, the Vances have access to their land. **That is all that is required.**

Id. at *5.

17. Plaintiffs also claim that their property, located in the heart of Lexington, is "landlocked". Plaintiffs assert that the "only means to access the property is from South Ashland Avenue through the access apron and parking lot drive aisle jointly used by Plaintiffs and Defendants." This is simply untrue. The property is not landlocked because Plaintiffs have access to the 813 Euclid Avenue property through the building they own located at 815-817 Euclid Avenue. This is in fact the entrance of their business. Plaintiffs can simply walk around the block to access the exterior side of their building, or go through their own building and come out on the other side on the "strip of land" located at 813 Euclid Avenue. It is not "landlocked" within any meaning of the word. *See* Black's Law Dictionary, "landlocked – surrounded by land, often with the suggestion that there is little or no way to get in or out without crossing the land of another." The entirety of the property (building and now the 6 foot strip down a portion of the side of the building) and at the back of the building is accessible from inside the building.

18. What Plaintiffs apparently are also seeking to do is expand upon an express easement (for limited ingress and egress) which easement is limited for the benefit of persons not a party (Farmers Jewelry property). This constitutes an improper attempt to enlarge the scope of the express easement. It is also improper without joining the owners of that parcel in the lawsuit before the Court address the merits of such claim. At best there is some 8 foot pedestrian easement running along the back of the property of Domino's, CC Prep and Beer Trappe businesses but not on Defendants' property. That is not sufficient for constant or continuous vehicle traffic that Plaintiffs are attempting to secure through this litigation and against Defendants.

19. "The extent of an easement interest is determined by the purpose served by the easement . . . Easements may be limited not only as to physical scope but also as to purpose." AmJur2d of Easements and Licenses § 60. "A court's overburdening analysis will evaluate whether it is reasonable to conclude that a particular use was within the contemplation of the parties to the conveyance and, in that context, whether the contested use made of the servient estate exceeds the rights granted to the user." AmJur 2d of Easements and Licenses § 62. This authority is aligned with Kentucky law on the issue, which provides: "Easements may not be enlarged on or extended so as to increase the burden on or interfere with the servient estate." *Com., Dep't of Fish & Wildlife Res. v. Garner*, 896 S.W.2d 10, 14 (Ky. 1995). Again, these Plaintiffs are not "landlocked" and cannot meet the requirements for a prescriptive easement or easement by necessity.

20. Finally, Courts have held that, as a matter of law, there is no claim for tortious interference where the defendant had a "privilege or justification to excuse its conduct." In other words, "the party whose interference is alleged to have been improper may escape liability by showing that he acted in good faith to assert a legally protected interest of his own." *Nat'l Collegiate Athletic Ass'n By & Through Bellarmine Coll. v. Hornung*, 754 S.W.2d 855, 858 (Ky. 1988). Here, these Defendants have a legally protected right to act on and with regard to protection of their own real and personal property and business interests. Their assertion of their own legal rights cannot be held to constitute "interference" as a matter of law.

21. Although the overall merits of the case are not to be addressed on a CR 65 Motion, the movant must show a substantial likelihood of success on the merits. Plaintiffs have clearly failed to meet this burden based on their own pleadings, while Defendants have demonstrated a

substantial likelihood that they will prevail on the merits of this case. Therefore, injunctive relief should be granted to Defendants.

iii The equities weigh against injunctive relief in favor of Plaintiffs, and for Defendants' request for injunctive relief.

22. The equities in the instant case weigh against injunctive relief as sought by Plaintiffs. Plaintiffs recognize and assert that the fence to be built would be constructed by Defendants on Defendants' own property. The public has an interest in the Court protecting the rights of private landowners to deal with their own property as they see fit. Although Thomas Behr by affidavit asserts that the "completion of construction of Bear & The Butcher will be delayed and potentially prevented altogether" by construction of the fence, this is pure speculation, and Behr did not testify at the hearing such that he would be subject to cross-examination or questioning by the Court; rather, he merely submitted a written affidavit. Behr also asserts by affidavit that Behr will be "unable to access 813 Euclid Avenue and the rear of 815-817 Euclid Avenue by vehicle", but does not cite any Kentucky law for the proposition that a party is legally entitled to access the "rear" of his property by "vehicle" when he otherwise has not purchased adequate property to have legal access to such property. Behr bought the property knowing this issue existed and chose to proceed forward. There is no authority so stating that one has a right to access the rear of his property by vehicle.

23. Finally, Thomas Behr states in his Affidavit that loss of parking will "certainly diminish the value of the properties, and will interfere with the operation of the business on the premises," and that its inability to access the rear of the properties will "prevent or impede access to vital parking areas used by employees and customers." Again, this is simple speculation. He never had parking to lose so this argument is specious.

24. In further support of the equities, Defendants pay the property taxes and maintenance on the property at issue, and there is and was no "15-year" history as alleged by Plaintiffs. Rather, this lawsuit is simply Plaintiffs' effort to usurp private property of another for their own use. The equities weigh in Defendants' favor.

TEMPORARY INJUNCTION

WHEREFORE, for the foregoing reasons and based on the evidence at the hearing, the Court **DENIES/OVERRULES** Plaintiffs' motion for Temporary Restraining Order/Injunction and GRANTS/SUSTAINS Defendants' Motion for Temporary Injunction. Plaintiffs are hereby restrained and enjoined from further trespass on or use of Defendants' property, including the apron and drive. Defendants shall post bond in the amount of $100.00. A nominal bond is all that is required because the restraint on Plaintiffs is to simply not trespass or violate the rights of others which Plaintiffs are bound to do even without an injunction in place. This injunction shall continue until modified or terminated by further order of the Court.

SO ORDERED this 27th day of June, 2017.

Pamela R Goodwine
JUDGE, FAYETTE CIRCUIT COURT

CLERK'S CERTIFICATE OF SERVICE

This is to certify that the foregoing was served on 27 day June, 2017, by mailing same first class mail, postage prepaid, and email to:

Guy M. Graves
Stefan J. Bing
GESS MATTINGLY & ATCHISON, PSC
201 West Short Street
Lexington, Kentucky 40507

Carroll M. Redford, III
Miller, Griffin & Marks, PSC
271 West Short Street, Suite 600
Lexington, Kentucky 40507

Vincent Riggs
by: [signature]
CLERK, FAYETTE CIRCUIT COURT