

STATE OF MICHIGAN JUDICIAL DISTRICT 31ST JUDICIAL CIRCUIT COUNTY PROBATE	<b>SUMMONS AND COMPLAINT</b>	CASE NO. 2012-001214-CH
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Court address 201 MCMORRAN BLVD., PORT HURON, MI 48060	Court telephone no. (810) 985-2200
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Plaintiff's name(s), address(es), and telephone no(s).  
 CHARLES MELMS  
 3321 ELK STREET  
 PORT HURON, MI 48060

v

Defendant's name(s), address(es), and telephone no(s).  
 WILMA J. FLETCHER  
 318 HILLCREST  
 GROSSE PTE FARMS, MI 48236

Plaintiff's attorney, bar no., address, and telephone no.  
 DAVID E. OPLIGER  
 1111 PINE GROVE AVENUE  
 PORT HURON, MI 48060  
 (810)966-1881

**SUMMONS NOTICE TO THE DEFENDANT:** In the name of the people of the State of Michigan you are notified:

1. You are being sued.
2. **YOU HAVE 21 DAYS** after receiving this summons to **file a written answer with the court** and serve a copy on the other party **or take other lawful action with the court** (28 days if you were served by mail or you were served outside this state). (MCR 2.111(C))
3. If you do not answer or take other action within the time allowed, judgment may be entered against you for the relief demanded in the complaint.

Issued 9-24-12	This summons expires 91 days	Court clerk JAY E. COOYER
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\*This summons is invalid unless served on or before its expiration date.  
 This document must be sealed by the seal of the court.

**COMPLAINT** *Instruction: The following is information that is required to be in the caption of every complaint and is to be completed by the plaintiff. Actual allegations and the claim for relief must be stated on additional complaint pages and attached to this form.*

**Family Division Cases**

There is no other pending or resolved action within the jurisdiction of the family division of circuit court involving the family or family members of the parties.

An action within the jurisdiction of the family division of the circuit court involving the family or family members of the parties has been previously filed in \_\_\_\_\_ Court.

The action  remains  is no longer pending. The docket number and the judge assigned to the action are:

Docket no.	Judge	Bar no.

**General Civil Cases**

There is no other pending or resolved civil action arising out of the same transaction or occurrence as alleged in the complaint.

A civil action between these parties or other parties arising out of the transaction or occurrence alleged in the complaint has been previously filed in \_\_\_\_\_ Court.

The action  remains  is no longer pending. The docket number and the judge assigned to the action are:

Docket no. 2012-1214-CH	Judge CYNTHIA J. LANE	Bar no. P-32136
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**VENUE**

Plaintiff(s) residence (include city, township, or village) KIMBALL TOWNSHIP	Defendant(s) residence (include city, township, or village) CITY OF HARPER WOODS, MI 48225
Place where action arose or business conducted KIMBALL TOWNSHIP	

Date: 9-24-2012

Signature of attorney/plaintiff: Kevin G. Win

If you require special accommodations to use the court because of a disability or if you require a foreign language interpreter to help you fully participate in court proceedings, please contact the court immediately to make arrangements.

STATE OF MICHIGAN  
ST. CLAIR COUNTY 31ST JUDICIAL CIRCUIT COURT

CHARLES MELMS

Plaintiff,

v.

Case No. 2012-001214-CH  
Hon. Cynthia A. Lane

LINDA FLETCHER; ANGELA BOKANO;  
JOSEPH BOKANO; WILMA J. FLETCHER;  
and BRYAN J. RAHN

Defendants.

David E. Oppliger (P-39490)  
David E. Oppliger, PLLC  
Attorney for Plaintiff  
1111 Pine Grove Avenue  
Port Huron, MI 48060  
(810)966-1881

Bruce A. Karash (P-15707)  
Attorney for Defendants  
27735 Jefferson Avenue  
St. Clair Shores, MI 48081  
(586)777-1991

**FIRST AMENDED COMPLAINT FOR DECLARATORY RELIEF**

There is no other pending or resolved civil action arising out of  
the same transaction of occurrence as alleged in the complaint.

NOW COMES, Charles Melms by and through his attorney, David E. Oppliger, PLLC and for his First Amended Complaint for Declaratory Relief, adding Wilma J. Fletcher and Bryan J. Rahn as party defendants, says as follows:

1. Plaintiff is a resident of St. Clair County, MI.
2. Defendants Linda Fletcher, Angela Bokano and Joseph Bokano are residents of the City of Harper Woods, Wayne County, MI.
3. Defendant Bryan J. Rahn is a resident of St. Clair Shores, Macomb County, MI.
4. Defendant Wilma J. Fletcher is a resident of Grosse Pointe Farms, Wayne County, MI.

5. Plaintiff owns property legally described as: W 168' OF N 700' OF W 1/2 OF E 1/2 OF NW 1/4 SEC 26 T6N R16E 2.7 A. Commonly known as 5353 Ravenswood Road, Township of Kimball, St. Clair County, MI. See Parcel "D" on Exhibit 2.

6. Defendants Linda Fletcher, Angela Bokano and Joseph Bokano are joint owners of property legally described as: N 1350' OF W 1/2 OF E 1/2 OF NW 1/4 EXC N 700' SEC 26 T6N R16E 10.07. Commonly known as a vacant lot, Township of Kimball, St. Clair County, MI. See Parcel "E" on Exhibit 2.

7. Upon information and belief Defendants Wilma J. Fletcher and Bryan J. Rahn are owners, or have an ownership interest in property legally identified as: S 650' OF N 2000' OF W 1/2 OF E 1/2 OF NW 1/4 SEC 26 T6N R16E 10.07 A. See Parcel "F" on Exhibit 2.

8. Upon information and belief Defendants Wilma J. Fletcher and Bryan J. Rahn are owners, or have an ownership interest in property legally identified as: W 1/2 OF E 1/2 OF NW 1/4 EXC N 2000' SEC 26 T6N R16E 10.62 A. See Parcel "G" on Exhibit 2.

9. According to a warranty deed recorded at Liber 1208, Page 817, on October 18, 1998 between Esther Vandevere and Roy A. Harris and Donna M. Harris the Plaintiff's property is subject to a "travel easement in favor of the owners of the property to the South, across the West 50 feet thereof." A copy of the deed is attached hereto as Exhibit 1.

10. The "property to the South" is owned by Defendants, Wilma J. Fletcher and Bryan J. Rahn, as set forth above. A copy of the survey that depicts the easement is attached as Exhibit 2.

11. The "travel easement" is not further described in any other written document of conveyance.

12. The Defendants' only right over Plaintiff's parcel is that of ingress and egress, along the west boundary of Plaintiff's property.

13. Despite this limited right over Plaintiff's property, Defendants have destroyed Plaintiff's property by riding vehicles over said property leaving deep tire tracks on the property. Further, Defendants have placed "no trespassing" signs on Plaintiff's property and attempted to rope off access to Plaintiff's property even though their ownership interest in said property is limited to a "travel easement."

14. Defendants attempted to prohibit Plaintiff from mowing his property across said easement even though the Plaintiff is the owner of said property and Defendants ownership is limited to that of an access easement for ingress and egress only with no other rights associated with it.

15. The use of Plaintiff's property exercised by Defendants must be reasonably necessary and convenient with as little burden as possible to the fee owner of the land.

16. The language in the granting instrument is not ambiguous and clearly does not permit permanent structures, signs, or motor vehicles all of which unduly burden Plaintiff's land.

WHEREFORE, Plaintiff respectfully requests this Honorable Court declare and adjudge by an Order of this Court that provides that:

- a. Defendants' rights to Plaintiff's parcel is strictly limited to a non-motorized ingress and egress travel easement along the west boundary of the property as set forth in the warranty deed recorded at Liber 1208, Page 8117;
- b. Defendants are enjoined from attaching any permanent structures on the parcel owned by Plaintiff;
- c. Defendants are enjoined from interfering with Plaintiff's use of his parcel, including but not limited to maintaining said parcel, or any other use by Plaintiff as long as ingress and egress by Defendants is not encumbered;
- d. The use of the travel easement is limited to Defendants or Defendants' successors in title only;
- e. Order further relief as this Court deems necessary and just; and
- f. Award costs and attorney fees wrongfully incurred.

Dated: 9-24-12

David E. Oppliger

David E. Oppliger  
Attorney for Plaintiff  
1111 Pine Grove Avenue  
Port Huron, MI 48060  
(810)966-1881

MARION SARGENT

REGISTER'S OFFICE - ST. CLAIR COUNTY

Received for record the day of OCT 18 1988 A.D. 19 at 11:47 o'clock P.M. and recorded in Liber 1208 of Deeds on page 817

*Marion Sargent* Register of Deeds

**WARRANTY DEED**

INDIVIDUAL - STATUTORY FORM  
Drafted by: Phone and Business Address:  
George C. Watson  
Touma, Watson, Nicholson,  
Whaling, Fletcher & DeGrow, P.C.  
522 Michigan Street  
Port Huron, MI 48060  
(313) 487-8444

LIBER 1208 PAGE 817

TITLE INSURANCE

(313) 987-2141  
(313) 848-4000  
1-800-482-4038  
MICHIGAN

**Equity** Company  
PORT HURON

(313) 987-2141  
(313) 848-4000  
1-800-482-4038

ABSTRACTS

Know all Men by these Presents, That on this 23 day of October, 1987, for the sum of Four Thousand Nine Hundred and Fifty Dollars (\$4,950.00)

ESTHER VANDEVERE

whose address is

4 Andover House, 1600 Lake Parker Drive West, Lakeland, FL 33806

CONVEY AND WARRANT TO

ROY A. HARRIS and SONNA M. HARRIS, Husband and Wife

whose address is

5351 Ravenswood Road, Port Huron, MI 48060

the following described premises

situated in the Township of Kimball St. Clair County, Michigan, to-wit:

The Westerly 168 feet of the Northerly 700 feet of the West 1/2 of the East 1/2 of the Northwest 1/4 of Section 26, Town 6 North, Range 16 East. (Containing 2.7 acres) Subject to a travel easement in favor of the owners of the property to the South, across the West 50 feet thereof.

S318A000 18/18/88DEEV\* 5.60  
\*\*8001\*\*

S318A000 10/18/88REVW\* 5.50  
\*\*8001\*\*

Subject to easements and restrictions of record and such as may have attached or accrued since May 8, 1978, the date of a certain Land Contract in fulfillment of which this deeds is given.

(If more space is needed for description, restrictions or other provisions, use reverse side)

Together with all and singular the tenements, hereditaments and appurtenances thereto belonging or in anywise appertaining.

Signed in Presence of:

Signed by:

Rita Drake  
Rita Drake

Esther VanDevere  
Esther VanDevere

Wade Luke  
Wade Luke

STATE OF MICHIGAN REAL ESTATE \*  
MICHIGAN TRANSFER TAX \*  
Dept of TREASURY \*

STATE OF FLORIDA  
County of Polk

The foregoing instrument was acknowledged before me this 23 day of October, 1987.

by ESTHER VANDEVERE

(Names of Persons Acknowledged)

Notary Public, State of Florida  
My Commission Expires Aug. 19, 1991  
My commission expires: \_\_\_\_\_

Carol E. Reid  
Polk Notary Public  
County Polk Florida

TAX CODE NO. 74-25-036-1004-150

MICH. TRANSFER TAX \$ 5.50  
When recorded return and mail to:

EXHIBIT

This is to certify that there are no tax liens or taxes on this property and that the taxes are paid for FIVE YEARS previous to the date of this instrument. This certification does not include taxes, if any, now in the process of collection by the City, Village or Township Treasurer.

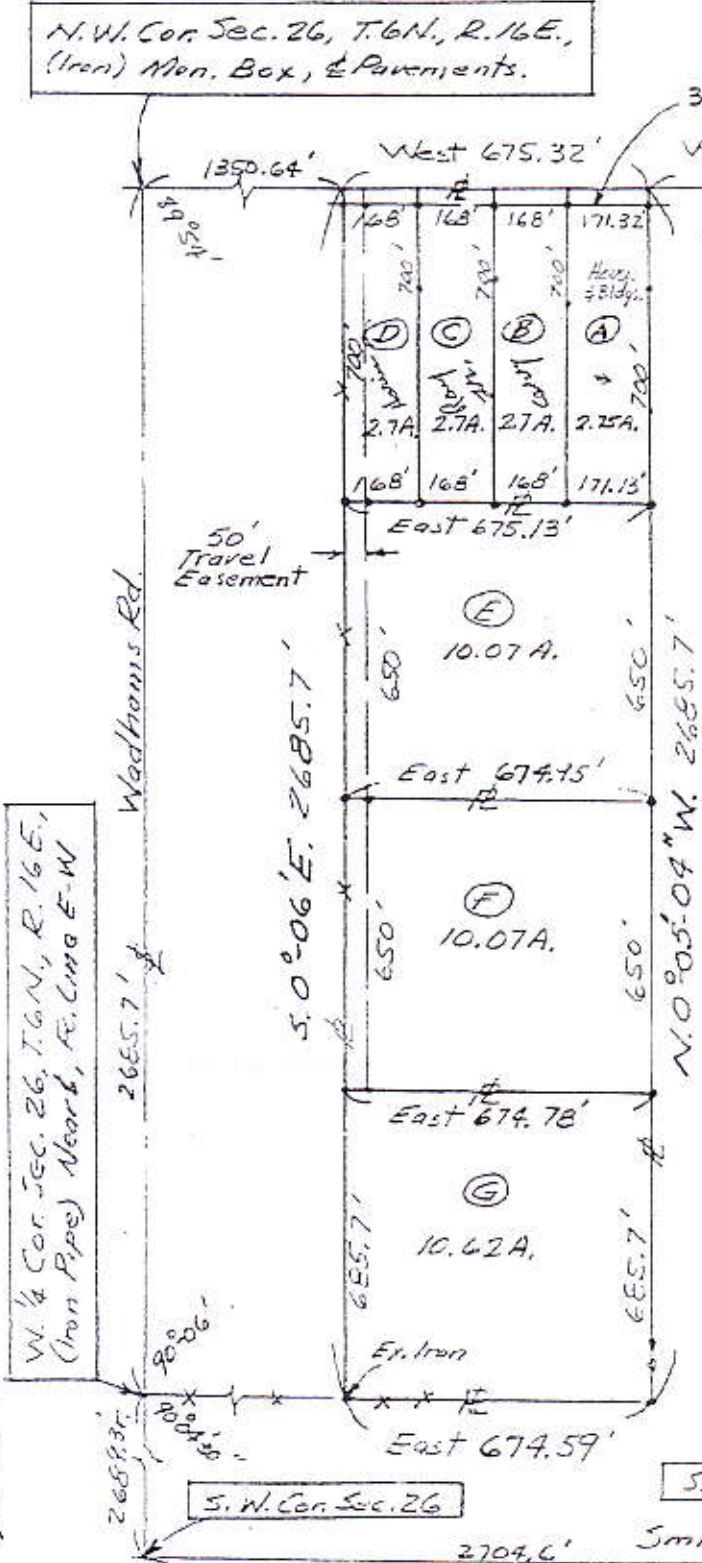
CERTIFIED TO: ELIZABETH CROWE, 405 SAVANAGH, DETROIT, MI. 48203,  
C/O John A. Rowling, Inc., 26 Sept 1977  
By: Charles E. Alloway, Reg. Land Surveyor, 4648 Atkins Rd., Port Huron, Mi.

SEE NEXT SHEET FOR PARCEL DESCRIPTIONS:

A-726

N.W. Cor. Sec. 26, T.6N., R.16E.,  
(Iron) Mon. Box, & Pavements.

N. 1/2 Cor. Sec. 26, T.6N., R.16E.  
Kimball Twp., St. Clair Co., Mi.,  
(Bolt) 0.5'S. & Pavement,  
24.4' S.W. to face 12" Maple,  
6.2' W. to E. end house,  
36.9' S.S.W. to Cor. House,  
58.0' N.N.W. to face D.E. Pole.



NORTH

Scale: 1" = 400'

- (-) Iron.
- (P) Property Line.
- (S) Section Line.
- (-x-) Fence.
- (-y-) Not to scale.
- (R/W) Right-of-Way.
- (Ex.) Existing.

EXHIBIT  
2

YOUR SMILING AUCTIONEER  
**FREEMAN F. GLENN**  
MINI FARM SPECIALIST  
Phones: 985-9597 - 385-3737  
PORT HURON, MICH.

S.W. Cor. Sec. 26      S. 1/2 Cor. Sec. 26

A-726

FINIS

CERTIFIED TO: ELIZABETH CROWE, 405 SAVANAGH, DETROIT, MI. 48203,  
C/O John A. Rowling, Inc., 26 Sept. 1977  
By: Charles E. Alloway, Reg. Land Surveyor, 4648 Atkins Rd., Port Huron, MI.

PARCEL "A" DESCRIPTION:

The Northerly 700 feet of the West Half of the East Half of the Northwest Quarter of Section 26, Town 6 North, Range 16 East, Kimball Township, St. Clair County, Michigan, Except the Westerly 504 feet thereof; Containing 2.75 Acres, Subject to Easements of Record.

PARCEL "B" DESCRIPTION:

The Easterly 168 feet of the Westerly 504 feet of the Northerly 700 feet of the West Half of the East Half of the Northwest Quarter of Sec. 26, T.6N., R.16E., Kimball Twp., St. Clair Co., MI.; Containing 2.7 Acres, Subject to Easements of Record.

PARCEL "C" DESCRIPTION:

The Easterly 168 feet of the Westerly 336 feet of the Northerly 700 feet of the West Half of the East Half of the Northwest Quarter of Sec. 26, T.6N., R.16E., Kimball Twp., St. Clair Co., MI.; Containing 2.7 Acres, Subject to Easements of Record.

PARCEL "D" DESCRIPTION:

The Westerly 168 feet of the Northerly 700 feet of the West Half of the East Half of the Northwest Quarter of Sec. 26, T.6N., R.16E., Kimball Twp., St. Clair Co., MI.; the Westerly 50 feet thereof subject to a travel easement for Southerly Parcels; Containing 2.7 Acres, Subject to any other Easements of Record.

PARCEL "E" DESCRIPTION:

The Southerly 650 feet of the Northerly 1350 feet of the West Half of the East Half of the Northwest Quarter of Sec. 26, T.6 N., R.16 E., Kimball Twp., St. Clair Co., MI.; Travel Access being an Easement, being the Westerly 50 feet of said West Half of the East Half of the Northwest Quarter of Sec. 26; Containing 10.07 Acres, Subject to any other Easements of Record. Said Travel Easement being for use of abutting easterly properties only.

PARCEL "F" DESCRIPTION:

The Southerly 650 feet of the Northerly 2000 feet of the West Half of the East Half of the Northwest Quarter of Sec. 26, T. 6 N., R. 16 E., Kimball Twp., St. Clair Co., MI.; And a Travel Easement-In-Common with abutting Easterly properties, being the Westerly 50 feet of said West Half of the East Half of the Northwest Quarter of Sec. 26; Containing 10.07 Acres, Subject to any other Easements of Record.

PARCEL "G" DESCRIPTION:

The West Half of the East Half of the Northwest Quarter of Sec. 26, T.6 N., R.16 E., Kimball Twp., St. Clair Co., MI., EXCEPT the Northerly 2000 feet thereof; And a Travel Easement-In-Common with abutting Easterly properties, being the Westerly 50 feet of said West Half of the East Half of the Northwest Quarter of Sec. 26; Containing 10.62 Acres, Subject to any other Easements of Record.

*we own E, F, G and purchased title insurance  
on at least on parcel, maybe all 3.*