

29

APN: 1022-29-411-044
RECORDING REQUESTED BY AND
MAIL TO:

MICHAEL SMILEY ROWE, ESQ.
1638 Esmeralda Avenue
Minden, NV 89423

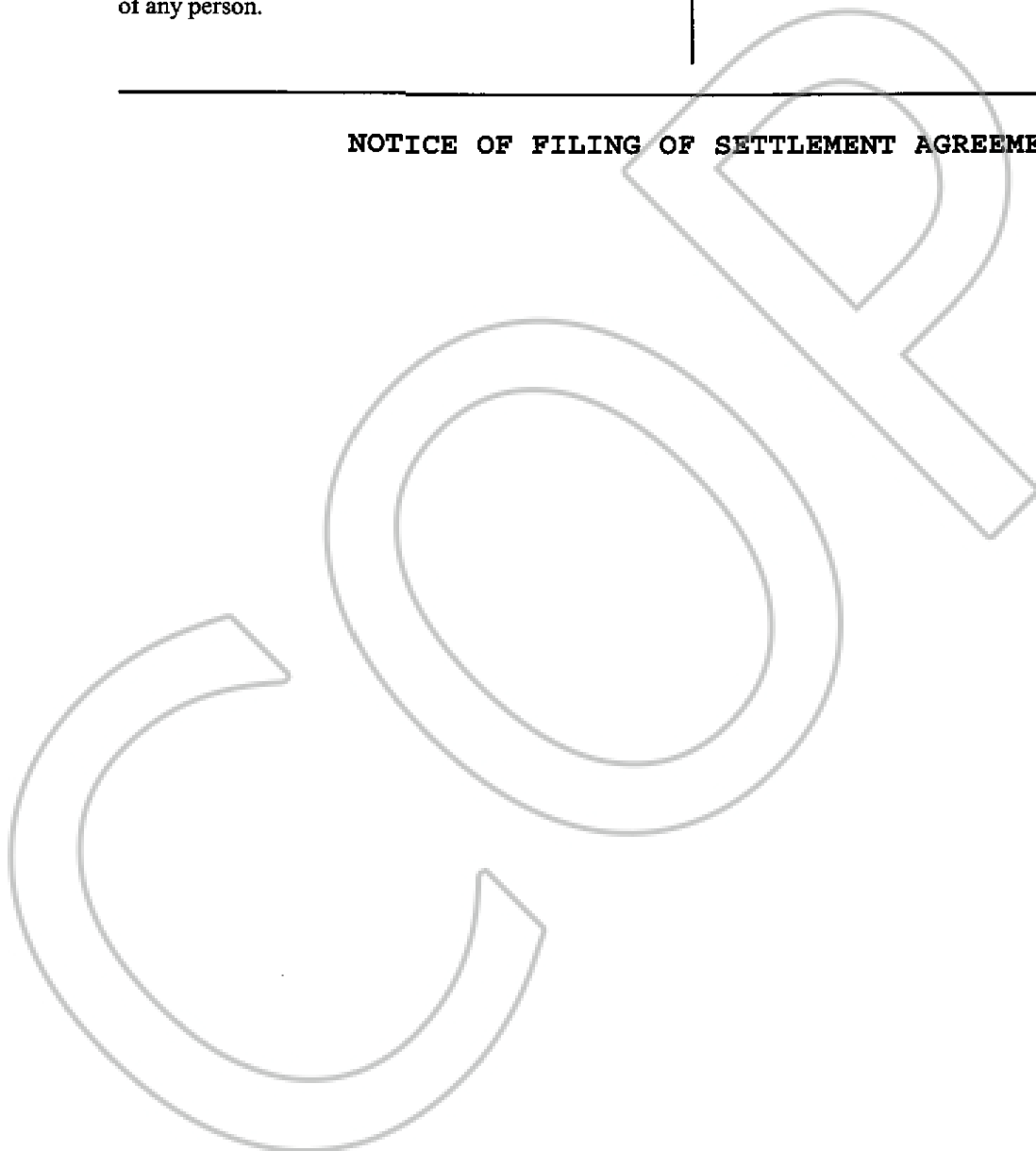
Pursuant to NRS 239B.030(4), I affirm that
the instrument contained below (or attached hereto)
does not contain the social security number
of any person.

DOC # 0694664
02/08/2007 03:07 PM Deputy: CF
OFFICIAL RECORD
Requested By:
ROWE & HALES E LLP

Douglas County - NV
Werner Christen - Recorder
Page: 1 Of 16 Fee: 29.00
BK-0207 PG-02795 RPIT: 0.00



NOTICE OF FILING OF SETTLEMENT AGREEMENT



1 CASE NO. 05-CV-0041

2 DEPT. NO. II

RECEIVED
NOV 22 2006
DOUGLAS COUNTY
DISTRICT COURT CLERK

2006 NOV 22 AM 10:29

BARBARA NEED
CLERK

B.J. THALER DEPUTY

3
4
5
6 IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
7
8 IN AND FOR THE COUNTY OF DOUGLAS

9 RICHARD and LINDA HAMILTON,
10 husband and wife, and GARTH and
11 LINDA MCDANIEL, husband and
12 wife,

13 Plaintiffs,

**NOTICE OF FILING OF SETTLEMENT
AGREEMENT**

14 vs

15 WALTER DUPUIS, LARRY DUPUIS and
16 DOES 1 through 5, inclusive,

17 Defendants.

18 **COMES NOW**, Plaintiffs above-named, by and through MICHAEL SMILEY
19 ROWE, ESQ. of ROWE & HALES, LLP, and hereby provide notice to the
20 Court and to all parties of the filing of the Settlement Agreement
21 duly executed, in multiple counterparts, by all of the named parties
22 herein.

23 Plaintiffs anticipate providing an Order to the Court consistent
24 with the terms of the Settlement Agreement as soon as the Order is

25 / / /
26 / / /
27 / / /
28 / / /

Mailing Address
P.O. Box 2080
Minden, NV 89423
Facsimile (775)782-3685

Rowe & Hales
Attorneys At Law

Physical Address
1638 Esmeralda Street
Minden, NV 89423
(775) 782-8141



BK- 0207
PG- 2796

1 reviewed and approved by counsel.

2 Dated this 21st day of November, 2006.

3 **ROWE & HALES, LLP**

4 *Michael Smiley Rowe*

5 MICHAEL SMILEY ROWE, ESQ.

6 Nevada Bar Number 1374

7 1638 Esmeralda

8 P.O. Box 2080

9 Minden, Nevada 89423

10 (775) 782-8141

11 Attorney for the Plaintiffs

Mailing Address
P.O. Box 2080
Minden, NV 89423
Facsimile (775) 782-3685

Rowe & Hales
Attorneys At Law

Physical Address
1638 Esmeralda Street
Minden, NV 89423
(775) 782-8141

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

COPIES



1 CASE NO: 05-CV-0041

2 DEPT NO: II

3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF DOUGLAS

RICHARD and LINDA HAMILTON,
Husband and Wife, and GARTH McDANIEL
and LINDA McDANIEL, Husband and Wife,

Plaintiffs,

vs.

SETTLEMENT AGREEMENT

WALTER DUPUIS, LARRY DUPUIS and
DOES 1 through 5, inclusive,

Defendants.

THIS SETTLEMENT AGREEMENT is entered into on this ____ day of
____, 2006, by and between RICHARD and LINDA HAMILTON, husband
and wife herein after referred to as HAMILTON, and GARTH and LINDA McDANIEL,
husband and wife, hereinafter referred to as McDANIEL, and LARRY DUPUIS and
WALTER DUPUIS, father and son, hereinafter referred to as DUPUIS. All six parties
are sometimes referred to collectively as "the parties".

I.

RECITALS

A. HAMILTON, McDANIEL and DUPUIS are owners of certain contiguous
property in the Topaz Lake Area of Douglas County, State of Nevada. DUPUIS property

1 is generally down slope from the HAMILTON and McDANIEL properties.

2 B. On February 10, 2005, HAMILTON and McDANIEL filed a lawsuit in the
3 Ninth Judicial District Court in Douglas County, Nevada, as captioned above, naming
4 DUPUIS as Defendants.
5

6 1. The Complaint alleges that DUPUIS trespassed onto the HAMILTON
7 and McDANIEL properties during the course of construction activities on the DUPUIS
8 property by encroaching with motorized equipment and disturbing their land.
9

10 2. The Complaint seeks damages from DUPUIS resulting from the
11 trespass and further alleges breach of duty of lateral support.
12

13 3. DUPUIS admitted the trespass but claimed the defense of necessity,
14 and counterclaimed alleging HAMILTON and McDANIEL have failed to mitigate water
15 runoff resulting from construction activities on their properties which altered the natural
16 runoff patterns thereby channeling runoff water onto their downslope property.
17

18 C. HAMILTON and McDANIEL produced a report by PEZONELLA
19 ASSOCIATES, INC., BRUCE R. LEE, Civil Engineer, dated November 16, 2004, which
20 describes several restoration methods which could be undertaken to restore and/or
21 stabilize the ground disturbed by DUPUIS.
22

23 D. Trial in this matter is presently scheduled to begin November 7, 2006.

24 E. The parties participated in a court-mediated settlement conference on October
25 3, 2006. The terms of this Agreement are the result of the settlement conference.
26

27 II.

28 SETTLEMENT TERMS

1 A. DUPUIS will remediate the land disturbed by their trespass in conformance
2 with the options laid out in the Pezonella Report.

3 1. Work will be done by a licensed contractor, chosen by DUPUIS.

4 a. DUPUIS will furnish proof of the contractor's current license.

5 2. DUPUIS will obtain any necessary permits required by Douglas
6 County, and be subject to any Douglas County on-site inspections that Douglas County
7 may deem necessary.

8 3. HAMILTON and McDANIEL will have a right to inspect DUPUIS'
9 work using an inspector of their choice.

10 a. The HAMILTON and McDANIEL inspector will approve and
11 "sign off" on the completed remediation work on behalf of HAMILTON and
12 McDANIEL to ensure it is done in conformance with the Pezonella Report.

13 b. The HAMILTON and McDANIEL inspector will have a right
14 of access onto the DUPUIS property for purposes of facilitating the inspection.

15 4. DUPUIS will pay the contractor and provide all materials and labor
16 necessary to complete the remediation work.

17 5. DUPUIS will perform the remediation work in a workmanlike manner
18 using standard and customary construction practices.

19 a. For purposes of this Settlement Agreement, DUPUIS will be
20 obligated to perform remediation along their lot line only where DUPUIS encroached
21 upon either the HAMILTON or McDANIEL property, a distance of approximately ninety-
22 one (91) feet.

1 b. DUPUIS may undertake additional remediation work along
2 their lot line, at their discretion, where they did not encroach upon either the
3 HAMILTON or McDANIEL property.
4

5 c. Any retaining wall that may be constructed as part of the
6 remediation work will be constructed on the Dupuis property and will be owned by
7 Dupuis.
8

9 6. HAMILTON and McDANIEL will allow DUPUIS reasonable access
10 to their properties if necessary to facilitate the remediation work.

11 7. Dupuis will complete the remediation work within ninety (90) days from
12 the execution of this agreement, weather permitting.

13 B. DUPUIS will pay the sum of FOUR THOUSAND FIVE HUNDRED
14 DOLLARS (\$4,500.00) to the Rowe & Hales Trust Fund.
15

16 1. ONE-THIRD (1/3) of that amount will be paid within THIRTY (30)
17 days of the execution of this Settlement Agreement by the parties.

18 2. The remaining TWO-THIRDS (2/3) of that amount will be paid when
19 the remediation work is completed and the HAMILTON and McDANIEL inspector
20 "signs off" on the work as being in conformance with the Pezonella Report.
21

22 C. The scheduled trial date will be vacated upon execution of this Settlement
23 Agreement by the parties.

24 D. HAMILTON and McDANIEL will request the Court to dismiss their lawsuit
25 with prejudice within TEN (10) days after their inspector has "signed off" the work as
26 being in conformance with the Pezonella report and DUPUIS has paid the entire FOUR
27
28



1 THOUSAND FIVE HUNDRED DOLLARS (\$4,500.00) referenced in Section II (B)
2 above.

3 1. The Court will retain jurisdiction of the case until it is dismissed.

4
5 2. Upon dismissal of the lawsuit, plaintiffs and defendants agree to release
6 the other, and the others' heirs, executors, administrators and estates from all claims,
7 sums of money, actions, and demands arising out of the original claims and
8 counterclaims of this case.

9 E. Subject to Section II (B) above, the parties agree to bear their respective
10 attorney's fees and costs incurred in connection with this lawsuit, including any costs or
11 fees incurred in the negotiation and drafting of this Settlement Agreement and bringing
12 this matter to conclusion.

13
14 F. Nothing in this Settlement Agreement shall be construed as an admission by
15 any party concerning any fact, claim, counterclaim, or defense asserted in this lawsuit.

16
17 G. This Settlement Agreement embodies the entire agreement of the parties
18 concerning settlement of this lawsuit.

19 F. The parties acknowledge representation by counsel throughout all negotiations
20 which preceded and culminated in the execution of this Settlement Agreement. Each of
21 the parties hereto further warrants for itself that it has read all of this Settlement
22 Agreement, has discussed it with his or her respective attorney and fully understands it.

23
24 G. This agreement may be executed in counterparts, and each executed
25 counterpart shall have the efficacy and validity of a signed original.

26 IN WITNESS WHEREOF, the parties have executed this Settlement Agreement
27 on the dates so indicated.
28



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Richard Hamilton
RICHARD HAMILTON

DATE: 11-3-06

Linda Hamilton
LINDA HAMILTON

DATE: 11-3-06

Garth McDaniel
GARTH McDANIEL

DATE: Nov. 3, 2006

Linda McDaniel
LINDA McDANIEL

DATE: 11-3-06

WALTER DUPUIS

DATE: _____

Larry Dupuis
LARRY DUPUIS

DATE: 10/27/06



1 CASE NO: 05-CV-0041

2 DEPT NO: II

3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF DOUGLAS

RICHARD and LINDA HAMILTON,
Husband and Wife, and GARTH McDANIEL
and LINDA McDANIEL, Husband and Wife,

Plaintiffs,

vs.

SETTLEMENT AGREEMENT

WALTER DUPUIS, LARRY DUPUIS and
DOES 1 through 5, inclusive,

Defendants.

THIS SETTLEMENT AGREEMENT is entered into on this ____ day of
_____, 2006, by and between RICHARD and LINDA HAMILTON, husband
and wife herein after referred to as HAMILTON, and GARTH and LINDA McDANIEL,
husband and wife, hereinafter referred to as McDANIEL, and LARRY DUPUIS and
WALTER DUPUIS, father and son, hereinafter referred to as DUPUIS. All six parties
are sometimes referred to collectively as "the parties".

I.

RECITALS

A. HAMILTON, McDANIEL and DUPUIS are owners of certain contiguous
property in the Topaz Lake Area of Douglas County, State of Nevada. DUPUIS property

↓



BK- 0207
PG- 2804

1 is generally down slope from the HAMILTON and McDANIEL properties.

2 B. On February 10, 2005, HAMILTON and McDANIEL filed a lawsuit in the
3 Ninth Judicial District Court in Douglas County, Nevada, as captioned above, naming
4 DUPUIS as Defendants.
5

6 1. The Complaint alleges that DUPUIS trespassed onto the HAMILTON
7 and McDANIEL properties during the course of construction activities on the DUPUIS
8 property by encroaching with motorized equipment and disturbing their land.
9

10 2. The Complaint seeks damages from DUPUIS resulting from the
11 trespass and further alleges breach of duty of lateral support.

12 3. DUPUIS admitted the trespass but claimed the defense of necessity,
13 and counterclaimed alleging HAMILTON and McDANIEL have failed to mitigate water
14 runoff resulting from construction activities on their properties which altered the natural
15 runoff patterns thereby channeling runoff water onto their downslope property.
16

17 C. HAMILTON and McDANIEL produced a report by PEZONELLA
18 ASSOCIATES, INC., BRUCE R. LEE, Civil Engineer, dated November 16, 2004, which
19 describes several restoration methods which could be undertaken to restore and/or
20 stabilize the ground disturbed by DUPUIS.
21

22 D. Trial in this matter is presently scheduled to begin November 7, 2006.

23 E. The parties participated in a court-mediated settlement conference on October
24 3, 2006. The terms of this Agreement are the result of the settlement conference.
25

26 II.

27 SETTLEMENT TERMS
28

1 A. DUPUIS will remediate the land disturbed by their trespass in conformance
2 with the options laid out in the Pezonella Report.

3 1. Work will be done by a licensed contractor, chosen by DUPUIS.

4 a. DUPUIS will furnish proof of the contractor's current license.

5 2. DUPUIS will obtain any necessary permits required by Douglas
6 County, and be subject to any Douglas County on-site inspections that Douglas County
7 may deem necessary.
8

9 3. HAMILTON and McDANIEL will have a right to inspect DUPUIS'
10 work using an inspector of their choice.

11 a. The HAMILTON and McDANIEL inspector will approve and
12 "sign off" on the completed remediation work on behalf of HAMILTON and
13 McDANIEL to ensure it is done in conformance with the Pezonella Report.

14 b. The HAMILTON and McDANIEL inspector will have a right
15 of access onto the DUPUIS property for purposes of facilitating the inspection.
16

17 4. DUPUIS will pay the contractor and provide all materials and labor
18 necessary to complete the remediation work.
19

20 5. DUPUIS will perform the remediation work in a workmanlike manner
21 using standard and customary construction practices.
22

23 a. For purposes of this Settlement Agreement, DUPUIS will be
24 obligated to perform remediation along their lot line only where DUPUIS encroached
25 upon either the HAMILTON or McDANIEL property, a distance of approximately ninety-
26 one (91) feet.
27
28

1 b. DUPUIS may undertake additional remediation work along
2 their lot line, at their discretion, where they did not encroach upon either the
3 HAMILTON or McDANIEL property.
4

5 c. Any retaining wall that may be constructed as part of the
6 remediation work will be constructed on the Dupuis property and will be owned by
7 Dupuis.
8

9 6. HAMILTON and McDANIEL will allow DUPUIS reasonable access
10 to their properties if necessary to facilitate the remediation work.
11

12 7. Dupuis will complete the remediation work within ninety (90) days from
13 the execution of this agreement, weather permitting.
14

15 B. DUPUIS will pay the sum of FOUR THOUSAND FIVE HUNDRED
16 DOLLARS (\$4,500.00) to the Rowe & Hales Trust Fund.
17

18 1. ONE-THIRD (1/3) of that amount will be paid within THIRTY (30)
19 days of the execution of this Settlement Agreement by the parties.
20

21 2. The remaining TWO-THIRDS (2/3) of that amount will be paid when
22 the remediation work is completed and the HAMILTON and McDANIEL inspector
23 "signs off" on the work as being in conformance with the Pezonella Report.
24

25 C. The scheduled trial date will be vacated upon execution of this Settlement
26 Agreement by the parties.
27

28 D. HAMILTON and McDANIEL will request the Court to dismiss their lawsuit
with prejudice within TEN (10) days after their inspector has "signed off" the work as
being in conformance with the Pezonella report and DUPUIS has paid the entire FOUR

1 THOUSAND FIVE HUNDRED DOLLARS (\$4,500.00) referenced in Section II (B)
2 above.

- 3 1. The Court will retain jurisdiction of the case until it is dismissed.
4
5 2. Upon dismissal of the lawsuit, plaintiffs and defendants agree to release
6 the other, and the others' heirs, executors, administrators and estates from all claims,
7 sums of money, actions, and demands arising out of the original claims and
8 counterclaims of this case.

9 E. Subject to Section II (B) above, the parties agree to bear their respective
10 attorney's fees and costs incurred in connection with this lawsuit, including any costs or
11 fees incurred in the negotiation and drafting of this Settlement Agreement and bringing
12 this matter to conclusion.
13

14 F. Nothing in this Settlement Agreement shall be construed as an admission by
15 any party concerning any fact, claim, counterclaim, or defense asserted in this lawsuit.
16

17 G. This Settlement Agreement embodies the entire agreement of the parties
18 concerning settlement of this lawsuit.

19 F. The parties acknowledge representation by counsel throughout all negotiations
20 which preceded and culminated in the execution of this Settlement Agreement. Each of
21 the parties hereto further warrants for itself that it has read all of this Settlement
22 Agreement, has discussed it with his or her respective attorney and fully understands it.
23

24 G. This agreement may be executed in counterparts, and each executed
25 counterpart shall have the efficacy and validity of a signed original.
26

27 IN WITNESS WHEREOF, the parties have executed this Settlement Agreement
28 on the dates so indicated.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

RICHARD HAMILTON

DATE: _____

LINDA HAMILTON

DATE: _____

GARTH McDANIEL

DATE: _____

LINDA McDANIEL

DATE: _____

~~WALTER DUPUIS~~

DATE: 11/10/06

LARRY DUPUIS

DATE: 10/27/06

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I hereby certify that I am an employee of ROWE & HALES, LLP., that on the 22 day of November, 2006, I served a copy of the NOTICE OF FILING OF SETTLEMENT AGREEMENT, by mailing a true and correct copies of the same via the U.S. Mail, postage prepaid, properly addressed to the following:

Les W. Bradshaw
P.O. Box 55
Wellington, NV 89444


KIM S. LEAVITT

CERTIFIED COPY

The document to which this certificate is attached is a full, true and correct copy of the original on file and of record in my office.

DATE: 2/8/07
Barbara J. Griffin, Clerk of the 9th Judicial District Court of the State of Nevada, In and for the County of Douglas,

By  Deputy

SEAL



Mailing Address
P.O. Box 2080
Minden, NV 89423
Facsimile (775) 782-3685

Rowe & Hales
Attorneys At Law

Physical Address
1638 Esmeralda Street
Minden, NV 89423
(775) 782-8141