

STATE OF VERMONT

SUPERIOR COURT

Civil

DIVISION

Chittenden

Unit

Docket No.: 331-4-19

<i>Plaintiff(s)</i> <b>PLH LLC</b>	VS.	<i>Defendant(s)</i> <b>LIBBY HARRIS ET AL.</b>
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SUMMONS

THIS SUMMONS IS DIRECTED TO: APPLE HILL HOMEOWNERS ASSOCIATION c/o LORA BLOCK  
34 MCINTOSH LAND, BENNINGTON, VT 05201

- YOU ARE BEING SUED.** The Plaintiff has started a lawsuit against you. The Plaintiff's Complaint against you is attached to this summons. Do not throw these papers away. They are official papers that affect your rights.
- YOU MUST REPLY WITHIN 21 DAYS TO PROTECT YOUR RIGHTS.** You must give or mail the Plaintiff a **written response** called an Answer within 21 days of the date on which you received this Summons. You must send a copy of your Answer to the Plaintiff's attorney located at: Allco Renewable Energy Limited

1740 Broadway, 15th Floor, New York, New York 10019, Thomas.Melone@AllcoUS.com

RECEIVED  
APR 10 2019

You must also give or mail your Answer to the Court located at:  
Vermont Superior Court - Chittenden Civil Division  
175 Main Street, Burlington, VT 05402

BY: .....

- YOU MUST RESPOND TO EACH CLAIM.** The Answer is your written response to the Plaintiff's Complaint. In your Answer you must state whether you agree or disagree with each paragraph of the Complaint. If you believe the Plaintiff should not be given everything asked for in the Complaint, you must say so in your Answer.
- YOU WILL LOSE YOUR CASE IF YOU DO NOT GIVE YOUR WRITTEN ANSWER TO THE COURT.** If you do not Answer within 21 days and file it with the Court, you will lose this case. You will not get to tell your side of the story, and the Court may decide against you and award the Plaintiff everything asked for in the complaint.
- YOU MUST MAKE ANY CLAIMS AGAINST THE PLAINTIFF IN YOUR REPLY.** Your Answer must state any related legal claims you have against the Plaintiff. Your claims against the Plaintiff are called Counterclaims. If you do not make your Counterclaims in writing in your Answer, you may not be able to bring them up at all. Even if you have insurance and the insurance company will defend you, you must still file any Counterclaims you may have.
- LEGAL ASSISTANCE.** You may wish to get legal help from a lawyer. If you cannot afford a lawyer, you should ask the court clerk for information about places where you can get free legal help. **Even if you cannot get legal help, you must still give the Court a written Answer to protect your rights or you may lose the case.**

**7. NOTICE OF APPEARANCE FORM.** THE COURT NEEDS TO KNOW HOW TO REACH YOU SO THAT YOU WILL BE INFORMED OF ALL MATTERS RELATING TO YOUR CASE. If you have not hired an attorney and are representing yourself, in addition to filing the required answer it is important that you file the Notice of Appearance form attached to this summons, to give the court your name, mailing address and phone number (and email address, if you have one). You must also mail or deliver a copy of the form to the lawyer or party who sent you this paperwork, so that you will receive copies of anything else they file with the court.

  
\_\_\_\_\_  
*Plaintiff's Attorney/Court Clerk*

APRIL 9, 2019

*Dated*

Served on

\_\_\_\_\_  
*Date*

\_\_\_\_\_  
*Sheriff*

STATE OF VERMONT

SUPERIOR COURT

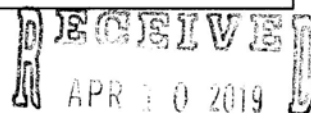
DIVISION

Unit

Docket No.: \_\_\_\_\_

<i>Plaintiff(s)</i>	<b>VS.</b>	<i>Defendant(s)</i>
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**NOTICE OF APPEARANCE  
For Self-Represented Litigant**



I am the:  Plaintiff  Defendant in this case.

**BY:** .....

I will represent myself and, in addition to filing the required answer, I hereby enter my appearance with the court. If I decide to be represented by an attorney in the future, either my attorney or I will notify the court of the change.

In representing myself, I understand that I **MUST**:

1. Notify the court in writing of any changes in my address, phone number, or email address.
2. Give or send copies of any papers I file with the court to every other party in this case. If another party has an attorney, I will give or send copies to that party's attorney.
3. File a certificate of service with the court swearing that I have sent the papers I am filing to all parties. I understand that I can find that form on the Vermont Judiciary website or at the court house.

**All court papers may be mailed to me by first class mail at the address listed below.**

My Street Address	My Mailing Address (if different)
<i>Name</i>	<i>Name</i>
<i>Address</i>	<i>Address</i>
<i>Town/City</i> <i>State</i> <i>Zip</i>	<i>Town/City</i> <i>State</i> <i>Zip</i>
<i>Phone Number (day)</i>	<i>Phone Number (day)</i>
<i>Email Address</i>	<i>Email Address</i>

*Dated*

*Signature*

\_\_\_\_\_

*Printed Name*

\_\_\_\_\_

52608

STATE OF VERMONT

SUPERIOR COURT  
CHITTENDEN UNIT

CIVIL DIVISION  
Docket No. 331-4-19

PLH LLC,

Plaintiff,

v.

LIBBY HARRIS a/k/a LIBBY GARRISON  
a/k/a LOIS PETROOK a/k/a LOIS SISTI  
a/k/a LOIS WAGNER, the APPLE HILL  
HOMEOWNERS ASSOCIATION INC.,  
ESTATE OF EARL SENEAL, PAUL W.  
BOHNE III and NANCY S. BOHNE,

Defendants.

RECEIVED  
APR 10 2019

BY: .....

**COMPLAINT FOR DECLARATORY RELIEF,  
INJUNCTIVE RELIEF AND DAMAGES**

NOW COMES PLH LLC ("PLH" or "Plaintiff") by way of complaint against LIBBY HARRIS a/k/a LIBBY GARRISON a/k/a LOIS PETROOK a/k/a LOIS SISTI a/k/a LOIS WAGNER, the ESTATE OF EARL SENEAL, the APPLE HILL HOMEOWNERS ASSOCIATION INC. ("AHHA"), PAUL W. BOHNE III and NANCY S. BOHNE (collectively, the "Defendants"), and respectfully petitions this Court for (i) injunctive relief, (ii) declaratory relief under 12 V.S.A. §4711 and V.R.C.P. 57 and (iii) damages and related relief against the Defendants.

**PARTIES**

1. Plaintiff PLH is an Indiana limited liability company with its office located at 145 Pine Haven Shores, Suite 1000A, Shelburne, Vermont 05482. Plaintiff owns Lot #1 on **Exhibit**

**B** and the parcel shown on **Exhibits A, B and C** as owned by Van Nostrand (“PLH Van Nostrand Lands”).

2. Upon information and belief, Defendants Paul W. Bohne and Nancy S. Bohne reside at 31 Beech Street, Essex Junction, Vermont 05452.

3. Defendant Libby Harris resides at 531 Apple Hill Road, Bennington, Vermont 05201, and is the owner of the parcel shown on **Exhibit B** as the “Orchard Lot.”

4. Defendant Estate of Earl Senecal is the owner of 133 Russet Drive, Bennington, Vermont 05201 which is shown as parcel 37 on **Exhibit B and Exhibit C**.

5. Defendant Apple Hill Homeowners Association Inc. is a Vermont non-profit corporation that was incorporated on February 21, 1974, whose principal office address is listed with the Vermont Secretary of State as 333 Apple Hill Road, Bennington, Vermont 05201.

#### **VENUE**

6. Venue is appropriate in this Court under 12 V.S.A § 402 as the Plaintiff and two of the Defendants reside in Chittenden County.

#### **FACTS**

7. Starting in or around 1973, Defendants Paul and Nancy Bohne began a series of subdivisions of their lands in Bennington, Vermont. Those subdivisions resulted, in part, in what is known as the Apple Hill development. *See* **Exhibit A**.

8. Following those subdivisions, the Bohnes engaged in two other subdivisions relevant here. The first subdivision was the creation of the Orchard Lot, shown on **Exhibit B** as the “lands of Mundt,” now owned by Defendant Harris. Defendant Harris acquired sole ownership of the Orchard Lot in two transfers. The first was by deed dated June 23, 2004 from Paul F. Mundt and Jean M. Mundt to Defendant Harris and Paul H. Garrison, *see* **Exhibit D**, and then by quit-

claim deed dated June 5, 2006, from Paul H. Garrison. See Exhibit E.

9. The second subdivision was the creation of Lots #1-3 shown on Exhibit B. PLH LLC acquired Lot #1, a parcel of approximately 5.63 acres, by deed dated July 16, 2014 from Harry and Diane Olsson. See Exhibit F. The Olssons acquired Lot #1 by deed dated June 3, 2009, from Defendant Harris. See Exhibit G. A deed for Lot #1 dated March 1, 2010, was executed by Harris and the Olssons and labeled as corrective warranty deed. See Exhibit H. Harris acquired her interest in Lot #1 in two transfers—one from Garrison (see Exhibit I) and the other from Paul and Jean Mundt by deed dated June 23, 2004. See Exhibit J. The Mundts in turn acquired Lot #1 from the Bohnes by deed dated October 3, 2001. See Exhibit K. The deed to Hilde Liu recorded October 7, 1988, and cross-referred to in some deeds is attached as Exhibit L.

10. Defendant Senecal owns the lands shown as lot “37” on Exhibits A and C. Senecal acquired title in a quit-claim deed dated September 25, 2005. Exhibit M.

11. The creation of Lot 37, like other subdivided parcels shown on Exhibit A as part of the Harwood Hill Orchards lots 1-43, is subject to an Act 250 permit and other restrictions of record that require the subdivision comply with the approved plans. The deed received by Senecal expressly states that it is “subject to all public easements of record which touch and concern these lands.” The 50-foot right-of-way on the approved Act 250 plan, Exhibit A and Exhibit C, is such a public easement of record. In addition, the deed to Senecal specifically states that it is subject to Vermont Permit EC-1542-8 which expressly shows the 50-foot right-of-way to PLH’s Von Nostrand Lands.

12. Exhibit A is the approved plan for the Act 250 permit and the subdivision under which Lot 37 was created.

13. As shown on Exhibit C (which is a zoomed-in excerpt from Exhibit A), the

approved plans require and provide for a 50-foot right-of-way for an extension to Russett Drive in order to allow PLH's Von Nostrand Lands to connect to Russett Drive.

**COUNT I**

**I. UNLAWFUL REFUSAL OF ACCESS ACROSS LOT 37 VIA THE APPROVED RIGHT OF WAY.**

14. Plaintiff repeats and re-alleges the allegations contained in each and every preceding paragraph of this Complaint.

15. Defendant Senecal has refused Plaintiff access across Lot 37 via the approved right-of-way shown on **Exhibit A and C** and that was a condition of the Act 250 permit and Vermont Permit EC-1542-8.

16. The Defendants Harris and AHHA have conspired and aided and abetted Senecal in his unlawful refusal, by among others things, making false statements regarding PLH and its related entities.

17. Plaintiff is a beneficiary of the right-of-way across Lot 37.

18. Wherefore Plaintiff asks this Court to declare that Plaintiff has the right to cross Lot 37 and build a roadway in the right-of-way shown on **Exhibit C**.

19. Plaintiff also asks this Court to enjoin the Defendants from further interference with Plaintiff's access and construction of a roadway in the right-of-way shown on **Exhibit C**.

20. Plaintiff also seeks monetary compensation for the damages for harm, lost profits, lost revenues and additional costs Plaintiff has suffered due to the Defendant Senecal's refusal and obstruction of access, and Harris' and the AHHA's conspiracy related thereto.

## COUNT II

### **II. DECLARATION THAT LIBBY HARRIS HAS NO RIGHT OF EASEMENT OR ACCESS ACROSS LOT #1 AND DAMAGES FOR COSTS OF ENFORCEMENT.**

21. Plaintiff repeats and re-alleges the allegations contained in each and every preceding paragraph of this Complaint.

22. Defendant Harris owned the Orchard Lot and Lot #1 at the same time.

23. Once Harris acquired title to both parcels the easement that Harris enjoyed for her Orchard Lot across Lot #1 was extinguished by operation of law under the doctrine of merger. A property owner cannot have an easement in her own estate in fee.

24. When in 2009 Harris transferred Lot #1 to the Plaintiff's predecessor in interest, the Olssons, Harris did not reserve or create a right of easement across Lot #1.

25. Plaintiff has provided permission to Defendant Harris to continue to cross Lot #1 pending the outcome of this litigation. Plaintiff has not granted and does not intend to grant a permanent easement to Harris to cross Lot #1.

26. Plaintiff asks for a declaratory judgment that Harris has no right to cross Lot #1, and Plaintiff asks for injunctive relief prohibiting Harris from crossing Lot #1.

27. Under the deed from Harris selling Lot #1, *see* **Exhibit F**, Harris is obligated to warrant and defend against unlawful claims. Harris' claim of an easement is an unlawful claim. Wherefore Plaintiff also asks for damages equal to the costs to bring this action.

## COUNT III

### **III. DECLARATION THAT PLAINTIFF HAS NO COST-SHARING OBLIGATION TO LIBBY HARRIS.**

28. Plaintiff repeats and re-alleges the allegations contained in each and every preceding paragraph of this Complaint.



29. Harris has claimed that Plaintiff has a cost sharing obligation for the pathway that Harris currently uses to access the Orchard Lot, which extends from the terminus of the public portion of Apple Hill Road and heads westly to the Orchard Lot, crossing Lots #1, #2, and #3.

30. There is no such cost sharing obligation imposed in any deeds or other covenants that burdens Plaintiff's lands.

31. Plaintiff asks for a declaratory judgment that it has no obligation to Harris for costs related to the access that she uses for her Orchard Lot.

#### COUNT IV

#### **IV. DECLARATION THAT GRANTING ACCESS ACROSS LOT #1 TO A NEIGHBORING SOLAR PROJECT DOES NOT VIOLATE ANY COVENANTS APPLICABLE TO LOT #1.**

32. Plaintiff repeats and re-alleges the allegations contained in each and every preceding paragraph of this Complaint.

33. Plaintiff has granted access rights across Lot #1 to Chelsea Solar LLC ("Chelsea"), which is developing a solar energy system on the PLH Van Nostrand Lands.

34. Harris and the AHHA have claimed that Chelsea cannot use the access granted by Plaintiff because the PLH Van Nostrand Lands are not being used for a single-family residential use.

35. There are no deed restrictions or covenants burdening Lot #1 that restrict the granting of access across Lot #1.

36. Plaintiff asks for a declaratory judgment that Plaintiff has the right to grant to Chelsea, and Chelsea has the right to use, access rights across Lot #1 for the purposes of accessing the solar energy system to be built by it on the PLH Van Nostrand Lands.

## COUNT V

### **V. DECLARATION THAT PLANTING VEGETATION ON LOT #1 DOES NOT VIOLATE ANY COVENANTS.**

37. Plaintiff repeats and re-alleges the allegations contained in each and every preceding paragraph of this Complaint.

38. Harris and the AHHA have claimed that Plaintiff cannot plant landscaping on Lot #1 to screen the solar energy system that Chelsea plans to build on the PLH Van Nostrand Lands. Harris and AHHA claim that no such landscaping is allowed on Lot #1 because the PLH Van Nostrand Lands would not be used for a single-family residential use.

39. There are no deed restrictions or covenants burdening Lot #1 that restrict the planting of landscaping on Lot #1.

40. Plaintiff asks for a declaratory judgment that there are no restrictions on planting landscaping on Lot #1 to screen the solar energy system that Chelsea plans to build on the PLH Van Nostrand Lands.

## COUNT VI

### **VI. DECLARATION THAT THE RESTRICTION ON THE HEIGHT OF A HOUSE IN THE HARRIS CORRECTIVE DEED IS VOID AND UNENFORCEABLE.**

41. Plaintiff repeats and re-alleges the allegations contained in each and every preceding paragraph of this Complaint.

42. Harris sold Lot #1 to the Olssons by deed dated June 3, 2009. Almost a year later Harris and the Olssons executed what was called a "corrective deed" adding the following language to the Schedule A - "Any dwelling shall be no higher than one story above ground."

43. No consideration was exchanged between Harris and the Olssons for the corrective deed. It is therefore void for lack of consideration.

44. For the reasons stated herein, Plaintiff asks for a declaratory judgment that the additional covenant purported to be added by the corrective deed is void and unenforceable.

#### **COUNT VII**

#### **VII. DECLARATION THAT LOT #1 IS NOT A PART OF THE AHHA.**

45. Plaintiff repeats and re-alleges the allegations contained in each and every preceding paragraph of this Complaint.

46. Defendant AHHA has sent an invoice to Plaintiff asserting that Plaintiff owes an assessment to AHHA.

47. Lot No. 1 is not part of the AHHA.

48. Plaintiff PLH asks for a declaratory judgment that Lot #1 is not part of the AHHA, and that Plaintiff does not owe any annual or other assessments or dues to the AHHA.

#### **COUNT VIII**

#### **VIII. DECLARATION THAT RESTRICTIVE COVENANTS CANNOT PREVENT PLAINTIFF FROM BUILDING A SOLAR ENERGY FACILITY ON LOT #1.**

49. Plaintiff repeats and re-alleges the allegations contained in each and every preceding paragraph of this Complaint.

50. Plaintiff's deed for Lot #1 contains restrictive covenants that AHHA and Harris have claimed prevent Plaintiff from constructing a stand-alone solar energy facility on Lot #1.

51. 24 V.S.A. § 544, which was enacted by section 15d of Act 45, the Vermont Energy Act of 2009, invalidates all "deed restrictions, covenants, or similar binding agreements running with the land" that "prohibit or have the effect of prohibiting solar collectors ... from being installed on ... parcels covered by the deed restrictions, covenants, or binding agreements."

52. Plaintiff asks for a declaratory judgment invalidating the restrictions in the deed to

Lot #1 that would prohibit or have the effect of prohibiting the installation of a solar energy facility on Lot #1.

**RELIEF REQUESTED**

1. For the reasons stated, Plaintiff respectfully requests the following relief:
  - a. Grant judgment in favor of Plaintiff and against Defendants;
  - b. Issue the declarations requested herein by Plaintiff;
  - c. Grant all appropriate injunctive relief;
  - d. Award Plaintiff an appropriate amount in monetary damages as determined at trial, including pre- and post-judgment interest;
  - e. Award Plaintiff's attorneys' fees and the costs of bringing this action; and
  - f. Grant Plaintiff such other relief as is just and appropriate

Dated: April 8, 2019

Respectfully submitted,



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Thomas Melone  
Bar No. 5456  
Allco Renewable Energy Limited  
1740 Broadway, 15<sup>th</sup> floor  
New York, NY 10019  
Phone: (212) 681-1120  
Email: Thomas.Melone@AllcoUS.com

*Attorney for Plaintiff*