

STATE OF NORTH CAROLINA
COUNTY OF BUNCOMBE

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

FILED FILE #: **7CV 04887**

LOUISE PACK METCALF, BARBARA
PACK HOLCOMBE, and MICHAEL
LAWRENCE,

Plaintiffs,

vs.

BLACK DOG REALTY, LLC, and
BUNCOMBE COUNTY, NORTH
CAROLINA,

Defendants.

2007 SEP 28 P 12:31

BUNCOMBE COUNTY, C.S.C.

BY:

COMPLAINT

Declaratory Judgment;
Breach of Contract;
Injunction

JURY

Plaintiffs, complaining of the Defendants, allege and say:

1. Plaintiff, Louise Pack Metcalf, is a citizen and resident of the County of Buncombe, State of North Carolina and is a decedent of George Willis Pack.
2. Plaintiff, Barbara Pack Holcombe, is a citizen and resident of the County of Brunswick, State of North Carolina and is a decedent of George Willis Pack.
3. Plaintiff, Michael Lawrence, is a citizen and resident of the County of Buncombe, State of North Carolina and is a decedent of George Willis Pack.
4. Upon information and belief, Defendant, Black Dog Realty, LLC, is a North Carolina Limited Liability Company organized and existing under the laws of the State of North Carolina ("Black Dog Realty").
5. Upon information and belief, Defendant, Buncombe County, North Carolina, is a body politic organized and existing under the Constitution and laws of the State of North Carolina and has been in existence and operating as a body politic and

county government during all relevant times discussed and enumerated in this Complaint ("Buncombe County").

6. On or about December, 1900, George Willis Pack offered a tract of land to Buncombe County upon certain conditions, reservations and stipulations, the primary purpose of which was to dedicate to the public forever said tract of land for use as a public square and as a site for a Court House and County Offices as is more particularly described in Paragraphs 8 and 9 hereunder ("the subject property").

7. On or about January 7, 1901, the Board of Commissioners of Buncombe County accepted this dedication. Said acceptance appears in the Minutes of the Proceedings of Board Minutes, Book #4, Page 306, dated January 7, 1901.

8. Thereafter, on or about July 24, 1901, George Willis Pack and his wife, Frances Pack, conveyed the subject property to Buncombe County for the stated purposes described herein, said Deed being recorded in Book 122, Page 21, Buncombe County Registry, a copy of which is attached hereto as Exhibit "A" and incorporated herein by reference.

9. Thereafter, on or about December 14, 1901, another Deed was recorded in Book 121, Page 144, Buncombe County Registry, which Deed purported to make changes to the previous Deed referred to dated July 24, 1901. A copy of this December 14, 1901 Deed is attached hereto as Exhibit "B" and incorporated herein by reference.

10. From and since the year 1901 through and including the present date, the subject property has been used continuously for public purposes including, but not limited to, a site for the Buncombe County Courthouse, a site for County Offices, and primarily and specifically, a site for a public park and public gatherings.

11. On or about November 21, 2006, Buncombe County conveyed a portion of the subject property to Defendant, Black Dog Realty, by way of Non-Warranty Deed dated November 21, 2006 and recorded in Book 4321, Page 342-344, Buncombe County Registry. A copy of said Deed is attached hereto as Exhibit "C" and incorporated herein by reference.

12. Plaintiffs are informed, believe and, therefore, allege that the offer of the subject property by George Willis Pack and the acceptance of his offer by Buncombe County created perpetual rights in and to the subject property in favor of the public, including, but not limited to, dedication as an easement. Such easement was dedicated to the public for use as a park and as a site for a Court House and County Offices.

13. Buncombe County accepted the subject property and such easement and rights explicitly by formal vote of the Board of Commissioners for Buncombe County, North Carolina on or about January 7, 1901.

14. In addition to formal acceptance, such rights and easement were accepted implicitly through the public's continued and uninterrupted use of the subject property from 1901 through the present date.

15. The above-referenced rights and easement are for the benefit of the public and are subject to public use under applicable law.

16. Upon information and belief, the Board of Commissioners for Buncombe County did not accept the subsequent conveyance dated December 14, 1901 and attached hereto as Exhibit "B", as there exists no record of same in said Deed.

17. Plaintiffs are informed, believe and, therefore, allege that Black Dog Realty intends to interfere with and block such rights and easement by constructing upon the subject property and easement including, but not limited to, building private

condominium residences, erecting barriers, posting no trespassing signs thereon and otherwise interfering with the public's use of the subject property.

18. In so doing, Black Dog Realty has and intends to interfere with and the public's property rights to access and use the subject property for public purposes.

COUNT ONE

(DECLARATORY JUDGMENT)

19. Plaintiffs reallege and incorporate herein by reference the allegations contained in paragraphs 1 through 18 of this Complaint.

20. There exists between the parties an actual and justiciable controversy regarding the public's and the Plaintiffs' property rights and easement rights over the subject property, currently owned by Black Dog Realty.

21. There exists between the parties an actual and justiciable controversy regarding the public's access to and right to exercise the foregoing easement and public rights in said property.

22. Plaintiffs are entitled to a judgment pursuant to Rule 57 of the North Carolina Rules of Civil Procedure and N.C.G.S. §1-253 et seq. declaring the rights and obligations of the plaintiffs and the defendants pursuant to the agreement between George Willis Pack and the defendant, Buncombe County, and the Deeds attached to this Complaint as Exhibits "A", "B" and "C".

COUNT TWO

(INJUNCTION)

23. Plaintiffs reallege and incorporate herein by reference the allegations contained in paragraphs 1 through 22 of this Complaint.

24. Plaintiffs are entitled to a temporary and permanent injunction to enforce the public's property rights and easements at issue in this case.

25. Plaintiffs request that this Court permanently enjoin the Defendants, their agents, or anyone acting on their behalf from blocking or interfering with the public's easement and rights in and to the subject property.

COUNT THREE

(BREACH OF CONTRACT)

26. Plaintiffs reallege and incorporate herein by reference the allegations contained in paragraphs 1 through 25 of this Complaint

27. Buncombe County has breached its contract with George Willis Pack, his heirs and decedents, by violating the terms and agreement contained in the offer and acceptance of the subject property by Buncombe County and contained in the Deed attached hereto as Exhibit "A", and incorporated herein by reference.

28. As a direct and proximate result of defendant, Buncombe County's, breach of contract as set forth herein, the plaintiffs, as descendants of George Willis Pack and members of the public have been damaged, and the descendants of George Willis Pack are entitled to damages and a reversion of the subject property to their and the public's use and benefit as a result of the breach of contract by Buncombe County and as stated in the Deed attached hereto as Exhibit "A".

WHEREFORE, Plaintiffs pray the Court as follows:

1. The Court grant a preliminary and permanent injunction ordering the Defendants, their agents or anyone acting on their behalf to cease and desist interfering in any way with and/or preventing the public's access to