



GEORGIA DEPARTMENT OF LAW

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January 17, 2013

Dianne Brannen
Clerk of the Superior Court
P.O. Box 1015
Macon, Georgia 31202-1015

RE: Lindsay D. Holliday v. GDOT, et al.
Civil Action No. 12-CV-58472
Superior Court of Bibb County

Dear Ms. Brannen:


Enclosed please find for filing the original and one extra copy of the following:

1. Defendants' Special Appearance Verified Answer
2. Defendants' Special Appearance Brief in Opposition to Complaint for Injunction and Temporary Restraining Order
3. Defendants' Special Appearance Motion to Dismiss Pursuant to O.C.G.A § 9-11-12(b)(6) and O.C.G.A § 9-11-12(b)(1) and Brief in Support
4. Affidavit of Van Etheridge

Please affix the filing date on the first page of the extra copy and return it to me in the enclosed self-addressed stamped envelope.

Thank you for your assistance in this matter.

Sincerely yours,



Mary Jo Volkert
Senior Assistant Attorney General

cc: Lindsay D. Holliday

Enclosure

IN THE SUPERIOR COURT OF BIBB COUNTY
STATE OF GEORGIA

LINDSAY D. HOLLIDAY,)
)
 PLAINTIFF,)
)
 V.) CIVIL ACTION FILE NO.
) 12-CV-58472
 GEORGIA DEPARTMENT OF)
 TRANSPORTATION and PROJECT)
 ENGINEER CLINTON FORD, P.E.)
)
 DEFENDANTS.)

DEFENDANTS' SPECIAL APPEARANCE VERIFIED ANSWER

COME NOW Defendants Georgia Department of Transportation (“GDOT”) and Clinton Ford, P.E. (“Ford”), collectively “Defendants”, by and through the Attorney General of the State of Georgia, and for their Special Appearance Verified Answer states as follows:

FIRST DEFENSE

The Complaint fails in whole or in part to state a claim upon which relief can be granted.

SECOND DEFENSE

Defendants assert the defense of sovereign immunity.

THIRD DEFENSE

This Court lacks subject matter jurisdiction in this case.

FOURTH DEFENSE

The Court lacks personal jurisdiction over GDOT.

FIFTH DEFENSE

Defendant Clinton Ford asserts the defenses of sovereign immunity and qualified immunity.

SIXTH DEFENSE

Defendants deny that Plaintiff is entitled to injunctive relief, a temporary restraining order or any relief.

SEVENTH DEFENSE

Plaintiff has an adequate remedy at law.

EIGHTH DEFENSE

With regard to the request for injunctive relief, Plaintiff is not faced with any threat of irreparable harm.

NINTH DEFENSE

The Complaint must be dismissed against GDOT for insufficient service of process.

TENTH DEFENSE

Plaintiff has failed to verify the Complaint pursuant to O.C.G.A. § 9-10-110.

ELEVENTH DEFENSE

Answering the specific paragraphs of Plaintiff's Complaint, this Defendant shows the following:

RESPONSE TO PARAGRAPH NO. 1

Defendants deny the allegations in Paragraph 1 as stated. Defendants admit that GDOT is an agency of the State of Georgia created pursuant to O.C.G.A. § 32-2-1 *et seq.*; Defendants deny that GDOT is subject to the jurisdiction of this Court. Defendants

further admit that Clinton Ford is an employee of GDOT; Defendants deny that Defendant Ford is subject to the jurisdiction of this Court.

RESPONSE TO PARAGRAPH NO. 2

Defendants deny the allegations in Paragraph 2 except as follows:

- a. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegation that “experts from the Macon-Bibb Tree Commission have produced several years of letters to the roads officials warning of extreme harm to the community if the canopy is unnecessarily decimated as planned by GDOT.” However, Defendants specifically deny that there will be “extreme harm to the community” and that the canopy of trees will be “unnecessarily decimated” as a result of the Project being constructed according to the current plans.
- b. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegation that “the Macon Telegraph editors labeled the process ‘the stuff of Harry Houdini’, meaning magic, trickery.” However, Defendants specifically deny that the methodology used to project traffic volumes to justify this particular road design is arbitrary and capricious or “magic and trickery.”

RESPONSE TO PARAGRAPH NO. 3

The allegations in Paragraph 3 are denied.

RESPONSE TO PARAGRAPH NO. 4

Defendants deny the allegations in Paragraph 4 as stated. Defendants admit that three letters are attached to the Complaint. These letters speak for themselves.

Defendants deny each and every allegation of the Complaint that is not specifically and expressly admitted herein.

DEFENDANTS DEMAND A TRIAL BY A TWELVE (12) PERSON JURY ON ANY ISSUE OF FACT NOT CAPABLE OF RESOLUTION AS A MATTER OF LAW.

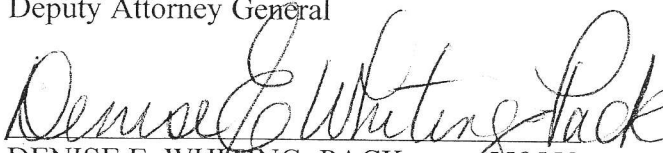
WHEREFORE, the Defendants deny that Plaintiff is entitled to any judgment or recovery or that the Plaintiff is entitled to relief against these Defendants on any grounds, and the Defendants pray for the following relief:

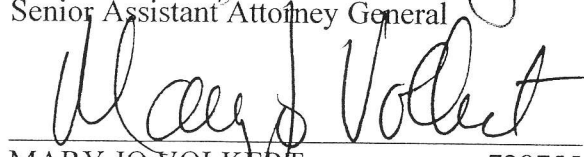
- (a) That the Court enter judgment against Plaintiff dismissing the claims against the Defendants;
- (b) That the Court deny Plaintiff's claim for injunctive relief;
- (c) That the Court award the Defendants their costs, attorney's fees and other expenses of litigation incurred in defending this action allowable by law.

Respectfully submitted this the 17th day of January, 2013.

SAMUEL S. OLENS 551540
Attorney General

W. WRIGHT BANKS, JR. 036156
Deputy Attorney General


DENISE E. WHITING-PACK 558559
Senior Assistant Attorney General


MARY JO VOLKERT 728755
Senior Assistant Attorney General

PLEASE ADDRESS ALL
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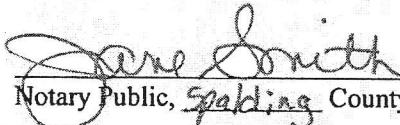
VERIFICATION

Personally appeared before the undersigned officer duly authorized to administer oaths, came THOMAS HOWELL, District Engineer, Georgia Department of Transportation's District Three, on behalf of the Defendants, who, after being duly sworn, deposes and states that he is authorized to sign this Verification on behalf of the Defendants, and hereby verifies that the facts contained in the within and foregoing VERIFIED ANSWER are true and correct to the best of his knowledge and belief.



Thomas Howell

Sworn to and subscribed before me
This 17th day of January, 2013.


Notary Public, Spalding County, Georgia.

My Commission expires 2/20/15



CERTIFICATE OF SERVICE

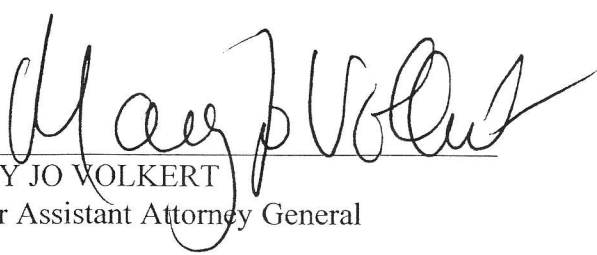
This is to certify that I have this day served a copy of the within and foregoing:

DEFENDANTS' SPECIAL APPEARANCE VERIFIED ANSWER

by U.S. Postal Service upon the following:

Lindsay D. Holliday
3091 Ridge Avenue
Macon, GA 31204

This the 17th day of January, 2013.



MARY JO VOLKERT
Senior Assistant Attorney General

IN THE SUPERIOR COURT OF BIBB COUNTY
STATE OF GEORGIA

LINDSAY D. HOLLIDAY,)
)
 PLAINTIFF,)
)
 V.) CIVIL ACTION FILE NO.
) 12-CV-58472
 GEORGIA DEPARTMENT OF)
 TRANSPORTATION and PROJECT)
 ENGINEER CLINTON FORD, P.E.)
)
 DEFENDANTS.)

**DEFENDANTS' SPECIAL APPEARANCE MOTION TO DISMISS
PURSUANT TO O.C.G.A. § 9-11-12(b)(6) AND O.C.G.A. § 9-11-12(b)(1)**

COME NOW Defendants Georgia Department of Transportation (“GDOT”) and Clinton Ford, by and through the Attorney General, State of Georgia, and file their Brief in Support of Defendants’ Special Appearance Motion to Dismiss Pursuant to O.C.G.A. § 9-11-12(b)(6) and O.C.G.A. § 9-11-12(b)(1) for the following reasons:

A. The Complaint is barred by the defense of sovereign immunity because Plaintiff cannot show that there has been an express waiver of sovereign immunity for his claim for equitable relief because Defendants have not acted outside of the scope of their discretionary authority; therefore, the Court lacks subject matter jurisdiction.

B. The Complaint fails to state a claim upon which relief can be granted against Defendant Ford because Plaintiff has not alleged that he has done anything unlawful.

C. The Complaint fails to state a claim upon which relief can be granted with regard to Plaintiff’s claims of alleged future violations of state and federal environmental laws because such claims are not ripe for adjudication.


This Motion is filed contemporaneously with the filing of GDOT's Special Appearance Verified Answer and Brief in Opposition to Complaint for Injunction and Temporary Restraining Order; thus, discovery is stayed pursuant to the provisions of O.C.G.A. § 9-11-12(j).


GDOT relies on all pleadings filed in this case, together with the attached Brief in Support.

Respectfully submitted this the 17th day of January, 2013.

SAMUEL S. OLENS 551540
Attorney General

W. WRIGHT BANKS 036156
Deputy Attorney General


DENISE E. WHITING-PACK 558559
Senior Assistant Attorney General


MARY JO VOLKERT 728755
Senior Assistant Attorney General

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CERTIFICATE OF SERVICE

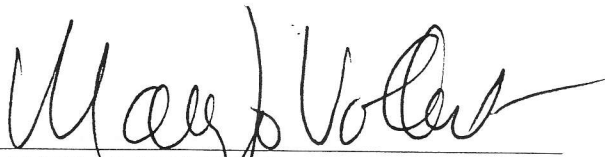
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**DEFENDANTS' SPECIAL APPEARANCE MOTION TO DISMISS
PURSUANT TO PURSUANT TO O.C.G.A. § 9-11-12(b)(1) AND O.C.G.A. § 9-11-12(b)(6)**

by U.S. Postal Service upon the following:

Lindsay D. Holliday
3091 Ridge Avenue
Macon, GA 31204

This the 17th day of January, 2013.



MARY JO VOLKERT
Senior Assistant Attorney General