

IN THE CIRCUIT COURT OF FRANKLIN COUNTY  
STATE OF MISSOURI

**FILED**  
FEB 1 11 2011  
BILL D. MILLER, Circuit Court Clerk  
FRANKLIN COUNTY, MISSOURI, D.C.

MONTE SPRAGUE, Co-Trustee, )  
GWYN RONSICK, Co-Trustee of the )  
JOHN L. SPRAGUE, JR., TRUST )

Plaintiffs, )

v. )

DANIEL SCHEER and )  
SUSAN SCHEER, )

Defendants. )

Case No. 10AB-CC00339

Division I

**DEFENDANTS' ANSWER AND AFFIRMATIVE DEFENSES TO  
PLAINTIFFS' PETITION FOR EJECTMENT,  
RECOVERY OF POSSESSION, DAMAGES AND QUIET TITLE**

**COUNT I - EJECTMENT**

COME NOW Defendants Daniel and Susan Scheer, by and through their attorney,  
Kurt A. Voss, and for their answer to Count I of Plaintiffs' Petition for Ejectment, Recovery of  
Possession, Damages and Quiet Title ("Plaintiffs' Petition") state as follows:

1. Defendants are without sufficient knowledge to either admit or deny the  
averments contained in Paragraph 1 of Count I of Plaintiffs' Petition and, therefore, deny same.

2. Defendants admit they own the property described in **Exhibit B** to Plaintiffs'  
Petition, but Defendants deny the remaining averments contained in Paragraph 2 of Count I of  
Plaintiffs' Petition. Further answering, and as an affirmative defense, Defendants state that they  
are owners of certain property located in Franklin County, Missouri, in Section 4, Township 43  
North, Range 2 West. Further answering, and as an affirmative defense, Defendants state that  
they do not own any property west of Plaintiffs.

3. Defendants admit the property line is the section line, but Defendants deny the  
remaining averments contained in Paragraph 3 of Count I of Plaintiffs' Petition. Further  
answering, and as an affirmative defense, Defendants state that the property line between

Plaintiffs and Defendants is the section line between Section 4 and Section 5 in Township 43 North, Range 2 West. Further answering, and as an affirmative defense, Defendants have never agreed the fence row is the property line. Further answering, and as an affirmative defense, Defendants state that the deeds of the parties do not state the fence row is the property line. Further answering, and as an affirmative defense, Defendants state that the deeds indicate the section line is the property line between the parties. Further answering, and as an affirmative defense, Defendants state that all of Defendants' property is located in Section 4. Further answering, and as an affirmative defense, Defendants state that all property in dispute owned by Plaintiffs is located in Section 5 only.

4. Defendants deny the averments contained in Paragraph 4 of Count I of Plaintiffs' Petition. Further answering, and as an affirmative defense, Defendants state that the western boundary of Defendants' property is the section line between Section 4 and Section 5. Further answering, and as an affirmative defense, Defendants state that the fence is not now, and has never been agreed as the property line regarding Plaintiffs and Defendants. Further answering, and as an affirmative defense, Defendants state that the east line of Plaintiffs' property clearly indicates that it is located on the east line of the Northeast Quarter of the Northeast Quarter of the Southeast Quarter of Section 5. See **Exhibit A** attached to Plaintiffs' Petition and incorporated herein by reference. Further answering, and as an affirmative defense, Defendants state that **Exhibit C** does not contain a legal description of the disputed property, as required by law. Further answering, and as an affirmative defense, Defendants state that if for some reason this Court were to find that any property located in Section 4 and set forth on Defendants' deed as being owned by Defendants is not Defendants' property, Defendants assert that all of said property in Section 4 has been used continuously, openly, notoriously, hostilely, exclusively and adversely by Defendants for a period of over ten (10) years thereby vesting title in Defendants.

Further answering, and as an affirmative defense, Defendants state that Defendants have paid the real estate taxes for Defendants' property in Section 4. Further answering, and as an affirmative defense, Defendants state that Plaintiffs have not paid the real estate taxes for property in Section 4 owned by Defendants. Further answering, and as an affirmative defense, Defendants state that Plaintiffs' deed shows no color of title to property in Section 4 as it adjoins the boundary line of Defendants' property.

5. Defendants deny the averments contained in Paragraph 5 of Count I of Plaintiffs' Petition.

6. Defendants deny the averments contained in Paragraph 6 of Count I of Plaintiffs' Petition. Further answering, and as an affirmative defense, Defendants state that any fence built was installed on the section line per survey of Paul G. Dopuch, Gasconade County Land Surveying, March 16, 2009, which survey confirmed the entire section line between Section 4 and Section 5, in Township 43 North, Range 2 West.

7. Defendants admit they have grown crops or hay on property owned by them in Section 4, but deny the remaining averments contained in Paragraph 7 of Count I of Plaintiffs' Petition. Further answering, and as an affirmative defense, Defendants state that most of the property between the parties is wild and vacant land.

8. Defendants deny the averments contained in Paragraph 8 of Count I of Plaintiffs' Petition. Further answering, and as an affirmative defense, Defendants state that the real estate in dispute is pasture and weeds and has been that since the early 1970's.

9. Defendants deny the averments contained in Paragraph 9 of Count I of Plaintiffs' Petition.

10. Defendants deny the averments contained in Paragraph 10 of Count I of Plaintiffs' Petition.

11. Defendants deny the averments contained in Paragraph 11 of Count I of Plaintiffs' Petition.

12. Defendants are without sufficient knowledge to either admit or deny the averments contained in Paragraph 12 of Count I of Plaintiffs' Petition and, therefore, deny same.

13. Defendants deny the averments contained in Paragraph 13 of Count I of Plaintiffs' Petition. Further answering, and as an affirmative defense, Defendants state they have been on their property in Section 4 only.

WHEREFORE, Defendants pray this Court order that Count I of Plaintiffs' Petition be dismissed; that a judgment be entered declaring any disputed property in Section 4 is owned in fee simple absolute by Defendants; that the property line between Plaintiffs and Defendants is the section line between Sections 4 and 5, Township 43 North, Range 2 West, as set forth on the parties' deeds and confirming the survey of Paul Dobsch is the section line for all purposes; for an order declaring the rights to the disputed property in Defendants; in the alternative, if the Court were to find such that Defendants do not own property up to the section line between Sections 4 and 5, Township 43 North, Range 2 West, that Defendants have acquired title to the same by adverse possession through their actions in continuously, openly, notoriously, hostilely, exclusively and adversely possessing and using said property in Section 4 for at least ten (10) years; for Defendants' attorney's fees and costs incurred herein; and such other and further relief as the Court deems just and proper in the circumstances.

#### **COUNT II – QUIET TITLE**

COME NOW Defendants Daniel and Susan Scheer, by and through their attorney, Kurt A. Voss, and for their answer to Count II of Plaintiffs' Petition state as follows:

1. Defendants restate their answers and affirmative defenses as set forth in Count I, Paragraphs 1 through 13, all as if more fully set forth herein.

2. Defendants deny the averments contained in Paragraph 2 of Count II of Plaintiffs' Petition.

3. Defendants deny the averments contained in Paragraph 3 of Count II of Plaintiffs' Petition. Further answering, and as an affirmative defense, Defendants state that property was purchased in 1976.

4. Defendants deny the averments contained in Paragraph 4 of Count II of Plaintiffs' Petition.

5. Defendants deny the averments contained in Paragraph 5 of Count II of Plaintiffs' Petition.

6. Defendants admit that all property shown in Exhibit C of Plaintiffs' Petition that lies in Section 4 is owned by Defendants but Defendants deny that any claim by Defendants clouds the title to Plaintiffs' property. Further answering, and as an affirmative defense, Defendants state that Defendants own all property established in Section 4 under their deed and Plaintiffs own property in Section 5. Further answering, and as an affirmative defense, Defendants state there is no cloud of title. Further answering, and as an affirmative defense, Defendants state the deeds are clear and not in dispute; thus no cloud of title exists. Further answering, and as an affirmative defense, Defendants state that Plaintiffs have no color of title to property in Section 4.

WHEREFORE, Defendants pray this Court order that Count I of Plaintiffs' Petition be dismissed; that a judgment be entered declaring any disputed property in Section 4 is owned in fee simple absolute by Defendants; that the property line between Plaintiffs and Defendants is the section line between Sections 4 and 5, Township 43 North, Range 2 West, as set forth on the parties' deeds and confirming the survey of Paul Dobsch is the section line for all purposes; for an order declaring the rights to the disputed property in Defendants; in the alternative, if the

Court were to find such that Defendants do not own property up to the section line between Sections 4 and 5, Township 43 North, Range 2 West, that Defendants have acquired title to the same by adverse possession through their actions in continuously, openly, notoriously, hostilely, exclusively and adversely possessing and using said property in Section 4 for at least ten (10) years; for Defendants' attorney's fees and costs incurred herein; and such other and further relief as the Court deems just and proper in the circumstances.

**COUNT III – SLANDER OF TITLE**

COME NOW Defendants Daniel and Susan Scheer, by and through their attorney, Kurt A. Voss, and for their answer to Count III of Plaintiffs' Petition restate their answers and affirmative defenses as set forth in Count I, Paragraphs 1 through 13, and Count I, Paragraphs 1 through 6, all as if more fully set forth herein, and state as follows.

1. Defendants deny the averments contained in Paragraph 1 of Count III of Plaintiffs' Petition.
2. Defendants deny the averments contained in Paragraph 2 of Count III of Plaintiffs' Petition. Further answering, and as an affirmative defense, Defendants believe and assert they own land in Section 4 and do claim the same.
3. Defendants deny the averments contained in Paragraph 3 of Count III of Plaintiffs' Petition.
4. Defendants deny the averments contained in Paragraph 4 of Count III of Plaintiffs' Petition.
5. Defendants deny the averments contained in Paragraph 5 of Count III of Plaintiffs' Petition.

WHEREFORE, Defendants pray this Court order that Count I of Plaintiffs' Petition be dismissed; that a judgment be entered declaring any disputed property in Section 4 is owned in

fee simple absolute by Defendants; that the property line between Plaintiffs and Defendants is the section line between Sections 4 and 5, Township 43 North, Range 2 West, as set forth on the parties' deeds and confirming the survey of Paul Dobsch is the section line for all purposes; for an order declaring the rights to the disputed property in Defendants; in the alternative, if the Court were to find such that Defendants do not own property up to the section line between Sections 4 and 5, Township 43 North, Range 2 West, that Defendants have acquired title to the same by adverse possession through their actions in continuously, openly, notoriously, hostilely, exclusively and adversely possessing and using said property in Section 4 for at least ten (10) years; for Defendants' attorney's fees and costs incurred herein; and such other and further relief as the Court deems just and proper in the circumstances.

Respectfully submitted,

ZICK, VOSS & POLITTE, P.C.

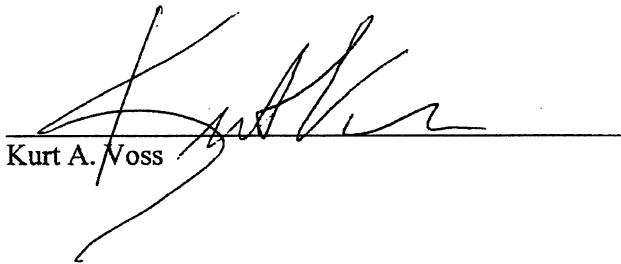
By: 

Kurt A. Voss, MBE #36668  
438 West Front Street  
P.O. Box 2114  
Washington, Missouri 63090  
(636) 239-1616  
(636) 239-5161 Facsimile  
kav@zvplaw.com

Attorney for Defendants Daniel and Susan Scheer

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document was mailed this 9<sup>th</sup> day of February, 2011, to Mr. Matthew A. Schroeder, Attorney for Plaintiffs, 80 North Oak Street, Union, Missouri 63084.

  
Kurt A. Voss

W:\Q-R-S-T-U\Scheer\Daniel&Susan\Answer&AD.doc