

THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA
SAVANNAH DIVISION

ELIZABETH E. CAIN;)
DAVID KAMINSKY and)
LARRY GIBSON,)

Plaintiffs,)

v.)

U.S. ARMY CORPS OF ENGINEERS;)
GEORGIA STATE DEPARTMENT OF)
NATURAL RESOURCES, COASTAL)
RESOURCES DIVISION; SUSAN)
SHIPMAN; MARK A. DANA and)
FRANCES M. DANA,)

Defendants.)

Case No. CV407-06

STATE OF GEORGIA)
COUNTY OF CHATHAM)

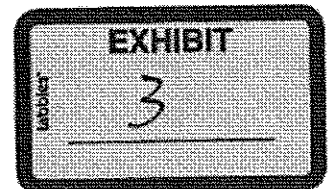
AFFIDAVIT OF ELIZABETH CAIN

1.

PERSONALLY APPEARED before me, an officer duly authorized by law to administer oaths, Elizabeth Cain, Plaintiff in the above-styled action who after first being duly sworn, states:

2.

My name is Elizabeth Cain. I am over the age of 18, and competent in all respects to testify regarding the matters set forth herein. I give this Affidavit voluntarily. I have personal knowledge of the facts stated in the foregoing Complaint and know them to be true and correct.



I provide this Affidavit to supplement my prior Affidavit of January 8, 2007, which is incorporated by reference herein.

3.

My husband and I live at 1021 Welch Street, a small road leading from Walthour Road to the marsh edge. We were first aware of the construction of the enormous dock at 1414 Walthour Road on or about December 6, 2006, when a large barge came up Tom Creek.

4.

This barge settled at the end of the preexisting dock of the Defendants, Mark and Frances Dana.

5.

Before the date when the barge arrived in early December, 2006, we had at no time whatsoever heard of this project from neighbors, officials with the DNR, or any other entity.

6.

On December 6, 2006, I contacted DNR and asked what information was available about the barge and what its purpose might be. In response, on December 8, 2006, we received a copy of the permit approval letter, which included plans for the dock.

7.

Our review of the permit approval letter and attached plans caused us great concern. We saw immediately that this proposed dock would impede navigation not just for ourselves but for the entire community of property owners on the Tom Creek Basin and any recreational boaters who have traditionally used these waterways. After my review of the permit approval letter, I spoke with one of the adjacent property owners who indicated that he saw some sort of rough

drawings but could not say if those were the ones actually submitted, nor was he fully aware of the size and magnitude of the dock and its impact on the fragile marsh ecosystem.

8.

On December 8, 2006, the same date on which we contacted DNR, I took photos of the barge and survey mark 770 feet from terminus of the pre-existing 210 foot long Dana dock. Exhibit A attached hereto shows the barge and small tugboat docked at the end of the pre-existing floating dock at the Dana property. The survey mark depicted in Exhibit B is topped with an American flag placed at the spot where the dock complex was to terminate. The barge and tug in the far distance are at the end of the pre-existing dock. Exhibit B attached hereto clearly shows the enormous length of the proposed walkway. In addition to the walkway, the dock complex will extend approximately 50 additional feet because of the floating dock, hoist and boathouse. In mid-January I went out in a boat with Larry Gibson during low tide, and based on my visual observation, navigation on this creek would be greatly impeded by construction of the floating dock. In fact, it appears that the proposed floating/fixed dock extension would block a significant amount of the very narrow channel, impeding navigation.

9.

When tides are rising or falling, a fast current is created that makes steering difficult. The shallower the area receiving incoming tidal water is, the more significant the impact on steering the change in the tide has. Thus, the effects of the changing tide are more pronounced in a small channel, such as the one in which the floating fixed dock extension is proposed to be built.

10.

In an e-mail to DNR on December 11, a group of property owners, including myself, asked the DNR to review this permit. See Exhibit C, attached.

11.

During the period from December 12-19, 2006, work on the dock complex appeared to be mostly suspended due to limited tide which rendered the barge unable to move. Exhibit D attached hereto depicts the timeline of each step of the dock construction.

12.

On December 16, a neighborhood meeting was held regarding the proposed dock construction. All neighbors present were concerned about the impact of dock. At the meeting, we agreed to speak with the Danas in an attempt to express our concerns.

13.

On December 20, 2006, Brad Gane of DNR responded to our inquiry via telephone and stated that DNR was considering requiring modification of the permit in order to require the property owner to span one of the navigable creeks about which we were concerned. The modified permit would require erecting a bridge 6 feet over mean high tide over the navigable waterway.

14.

On December 20, 2006, I spoke with Defendant Mark Dana in person. He told me that he had just learned about the new requirement of a bridge by the DNR. I asked him to meet with me, my husband, and any other property owners we could gather to discuss our concerns about his plans to build the only extended dock in this tidal basin.

15.

Mr. Dana begrudgingly said that he would meet with us "after the holidays."

16.

Despite the seven contacts described below attempting to arrange this meeting with Mr. Dana, he did not make himself available for discussion. On December 27, I stopped by the Dana residence to deliver a signed letter from adjacent property owners, but no one was home. On December 29, no one was home at the Dana residence, so I placed a letter in the Dana mail box from me personally to the Danas outlining my concerns and asking for a meeting. See Cain letter to the Danas attached hereto as Exhibit E.

17.

On December 27, 2007, the barge left the Tom Creek basin. We were hopeful at that point that our entreaties that the proposed dock permit be re-evaluated had been successful.

18.

On December 31, 2006, the barge returned to the dock construction site, loaded with additional supplies. I again called the Dana residence, but there was no answer.

19.

On January 1, 2007, I hand delivered a signed letter from myself and nearby property owners to Frances Dana. The letter again expressed our concerns and stated again that we would like to talk with them. I also told Mrs. Dana in person at that time that we would like to talk with them about their dock. See letter dated December 20, 2006 and delivered on January 1, 2007, attached hereto as Exhibit F.

20.

I called the Dana residence that evening, January 1, 2007, and left a message to please give me a call.

21.

On the morning of January 2, 2007, I called the Dana residence and again left a message asking the Danas to please give me a call. There was, once again, absolutely no response. I wrote a letter of summary to local property owners on Jan 2, 2007. At this point the work had not yet begun on the bridge.

22.

Work continued on the dock construction. On Thursday, January 4, 2007, the barge was moved to the area where the fixed dock platform and boathouse are proposed to be built. On that date, we hired Stack & Associates to represent us in an attempt to resolve the issue of whether the dock was properly permitted.

23.

Work continued on the dock construction. On January 6, 2007, we took photos of damage to the marsh caused by the barge and of debris and litter in the water. There had still been absolutely no contact from the Danas. The debris depicted in Exhibit G includes pressure treated timbers, which are known to contain toxic chemicals such as chromated copper arsenate (CCA), pentachlorophenol (PCP), ammoniacal copper arsenate (ACA) and creosote.

24.

As can readily be seen in the photo attached hereto as Exhibit H, areas of the marsh which were previously grass covered before the barge damaged them are now all open water. Exhibit I

depicts areas where marsh grass was destroyed in the process of dock construction by Defendants Dana.

25.

On Monday, January 8, 2007, Plaintiffs filed their Complaint, Motion for Temporary Restraining Order and Preliminary Injunction and Memorandum in Support thereof.

26.

On Tuesday, January 9, 2007, work on the dock continued, and Defendants Dana were personally served with the above pleadings.

27.

Work continued on the dock construction on Wednesday, January 10, 2007, despite the knowledge by the Danas of a Motion for Temporary Restraining Order having been filed.

28.

Also on January 10, 2007, I personally delivered a copy of Judge Moore's Order of that date to Mark Dana. I told him that we would still be happy to talk to him with our lawyers present.

29.

On Thursday, January 11, 2007, work on the dock continued. See photo attached hereto as Exhibit I which shows a worker installing decking on January 11, 2007.

30.

The barge became stuck in the marsh due to very low tides and yet work continued. See photos attached hereto as Exhibits J and K which show attempts by workers to move the barge.

31.

Work continued through January 15, 2007 on the dock, as depicted on Exhibit L. This photo was taken a full six days after the Danas were served with the Plaintiffs' Complaint and pleadings and five days after the Danas were given Judge Moore's Order of January 10, 2007.

32.

Attempts to move the barge have caused further, severe damage to the marsh and live oyster beds. Exhibit M depicts the barge sitting directly on a live oyster bed. Exhibit N shows damage to marsh and creekbed collapse from the barge's movements. Exhibit O clearly shows the severe damage that moving the barge has caused to the marsh. Areas shown as open water were once marsh that has been severely damaged as attempts to move barge continued through January 15, 2007.

33.

The proposed dock complex will cause immediate and long term degradation of the upland marsh in front of our home and in front of our neighbors' property both to the north and south as the result of wrack build-up and impeded tidal flow.

34.

We have already observed the creation and accumulation of marsh wrack in an area which previously had none. See photo of marsh wrack build-up already begun in foreground of photo dated January 20, 2007, attached as Exhibit P.

35.

Our view of the Tom Creek basin will be irreparably harmed by a 980 foot dock, boathouse and hoist. See photo attached as Exhibit Q of our view before the dock construction was begun.

36.

The 980 foot dock construction is out of place, out of character, and not in keeping with other docks in visual proximity. Exhibit R shows the impact of the dock in this stage of mid-construction on our view. The impact of this enormous 980 foot dock on our view will be much worse if the railing, boathouse and hoist are added.

37.

Contrary to representation made to the Court and in the permit application by the Danas, the proposed 980 foot dock does not access deep water at all tides. At low tide, there can be as little as two feet of water at the site of the proposed fixed and floating docks. See photo attached as Exhibit S which was taken one hour after low tide on January 20, 2007. This photo shows approximately two feet of water at the future site of the proposed floating as well as the proposed fixed dock.

38.

Until the construction of the enormous dock at 1414 Walthour Road began, all property owners in the Tom Creek tidal basin had short docks accessing tidal creeks or simply pulled their boats up onto their property with a hand winch or by hand. See Exhibit T attached hereto, which is a panoramic view of the Tom Creek basin south of the Dana dock.

39.

The Dana dock will reduce the flow of water to our creeks and will impede the amount of water reaching the uplands marshes. Fixed docks, floating docks, and the 980 foot dock itself will obstruct this flow. The small size of the creek and the large size of this dock complex will dramatically alter how water comes into our creek.

40.

We anticipate having less water access once the Dana dock complex is completed. The first section of dock that was extended just past the pre-existing floating dock completely blocks access to a tributary which my neighbors and I used often to access other tributaries on the way to deeper water. See Exhibit U, attached, which shows how our access is now blocked by the new Dana dock to the creek we formerly used and enjoyed.

41.

We anticipate that the water contained in the Tom Creek basin will be diverted, particularly by the floating dock, and therefore provide ourselves and our neighbors less access to creeks and tributaries. Upland marsh degradation causes creek beds to collapse, mudflats to form and the creeks to longer hold water. See Exhibits V and W which clearly show development of mudflats, marsh wrack and the enormous length of the Dana dock.

FURTHER AFFIANT SAYETH NOT


ELIZABETH CAIN

STATE OF GEORGIA

COUNTY OF CHATHAM

Elizabeth Cain appeared before me,
a Notary Public in and for the above
jurisdiction, this 26th day of January, 2007,
and made the foregoing Affidavit, under oath.

[Affix Seal]



Notary Public

My commission expires: 2/15/09