

**IN THE CIRCUIT COURT  
FOR THE THIRD JUDICIAL CIRCUIT  
MADISON COUNTY, ILLINOIS**

---

TERRY LYNN BRASWELL and  
TERESA EILEEN BRASWELL,

Plaintiffs,

v.

No. 08-L-582

J. LLOYD TOMER, an individual,  
GREAT RIVER ENTERPRISES LIMITED  
PARTNERSHIP NO. 1, an Illinois limited partnership,  
YOURTRAVELBIZ.COM, INC., an Illinois corporation,  
and TOMER & ASSOCIATES, an Illinois corporation,

Defendants.

CHRISTINE TOMER, an individual,

Respondent in Discovery.

MERIDIAN BANK, an Illinois Bank,

Necessary Party.

**FILED**

APR 22 2009

CLERK OF CIRCUIT COURT #77  
THIRD JUDICIAL CIRCUIT  
MADISON COUNTY, ILLINOIS

---

JOHN AND JAYNE SIMMONS,  
AS TRUSTEES OF THE RIVER HOUSE TRUST,

Intervenors/Counter-Plaintiffs/  
Third-Party Plaintiffs,

v.

GREAT RIVER ENTERPRISES LIMITED  
PARTNERSHIP NO. 1, an Illinois limited partnership,

Counter-Defendant,

TERRY LYNN BRASWELL, )  
 )  
 Counter-Defendant, and )  
 )  
 FEDERAL DEPOSIT INSURANCE COMPANY, )  
 SOLELY IN ITS CAPACITY AS )  
 RECEIVER FOR MERIDIAN BANK, )  
 )  
 Third-Party Defendant. )

---

**COUNTERCLAIMS AND THIRD-PARTY CLAIM OF  
 JOHN AND JAYNE SIMMONS, AS TRUSTEES OF THE RIVER HOUSE TRUST**

John and Jayne Simmons, as Trustees of the River House Trust, through their attorneys,  
 Jenner & Block LLP, complain as follows:

**INTRODUCTION**

1. John and Jayne Simmons, as Trustees of the River House Trust, are seeking a  
 declaratory judgment in connection with the conveyance of certain parcels of real property  
 located at 12 Danforth in Alton, Illinois.

**PARTIES**

2. John and Jayne Simmons are the trustees of The River House Trust Dated August  
 21, 2003.

3. Great River Enterprises Limited Partnership No. 1 ("Great River Enterprises") is  
 an Illinois limited partnership. On information and belief Great River Enterprises is indirectly  
 controlled by J. Lloyd Tomer.

4. Federal Deposit Insurance Corporation ("FDIC") is on information and belief the  
 receiver for Meridian Bank.

5. Terry Braswell is on information and belief a resident of Madison County,  
 Illinois.

## VENUE

6. Venue is proper pursuant to 735 ILCS 5/2-101 in that at least one of the defendants resides in Madison County, Illinois and the transaction at issue in this action relates to real property located in Madison County, Illinois.

## FACTUAL ALLEGATIONS

7. On January 22, 2007, John and Jayne Simmons ("the Simmons"), as trustees of the River House Trust dated August 21, 2003, entered into a Real Estate Sale Agreement ("Agreement") with Great River Enterprises for the conveyance of certain parcels of real property located at 12 Danforth in Alton, Illinois (the "Property"). A copy of the Agreement is attached as Exhibit 1.

8. In exchange for the conveyance of the Property, Mr. Tomer, acting through Great River Enterprises, agreed to provide the Simmons with 1,000,000 shares of the common stock of YTB International, Inc. ("YTB"), a Delaware Corporation controlled by Mr. Tomer.

9. The Agreement granted the Simmons an express Possibility of Reverter. According to Section 3.1 of the Agreement, the Property would revert to the Simmons on December 31, 2011 (the "Reversion Date") unless, at any time prior to the Reversion Date, the common stock of YTB had attained a certain "Trading Price" for a specified period of time.

10. Section 3.1 further provides for the automatic acceleration of the Reversion Date upon the occurrence of certain events. Specifically, Paragraph 3.1 reads in relevant part:

**The Reversion Date will be accelerated automatically upon the occurrence of an Event of Bankruptcy (as defined in Section 3.5), Purchaser's conveyance or attempted conveyance of title to the Property, or Purchaser's waste of the Property, including without limitation, abuse, destructive use, neglect or any act or omission causing material or unreasonable injury, damage, or loss to the Property.**

11. The sale of the Property was reflected in a Trustee's Deed, dated January 24, 2007, which was duly recorded in the Madison County Recorder's Office on February 12, 2007. A copy of the Trustee's Deed is attached as Exhibit 2. The Trustee's Deed reflects in Paragraph 1 that "[t]he Property is subject to a possibility of reverter, the specific terms and conditions of which are set forth in Section 3.1 of that certain Real Estate Sale Agreement dated January 22, 2007 between Grantor and Grantee . . . ." The Deed further provides that "[r]eference is hereby made to the Sale Agreement for the terms and conditions of the Possibility of Reverter, which such terms and conditions are hereby incorporated into and made a part of this Deed by this reference."

12. On or about September 1, 2008, the Simmons discovered that the Property had become encumbered by a mortgage in the amount \$1,300,000 and a mechanics lien in the amount of \$1,000,000.

13. A public records search in the Madison County Recorder's Office revealed that on December 8, 2007, Great River Enterprises secured a \$1,300,000 mortgage on the Property through Meridian Bank. The mortgage was recorded in the Madison County Recorder's Office on December 11, 2007. A copy of the Mortgage is attached as Exhibit 3.

14. A public records search in the Madison County Recorder's Office also revealed that on August 14, 2008, Terry Braswell filed a \$1,000,000 contractor's claim for mechanics lien on the Property and against the interest of Great River Enterprises, Tomer & Associates, Inc., J. Lloyd Tomer, and Christine Tomer. A copy of the Original Contractor's Claim for Mechanics Liens is attached as Exhibit 4.

15. The Claim for Mechanics Lien provides that Mr. Braswell entered into a contract with J. Lloyd Tomer "to provide all necessary labor, materials, and work to landscape the

grounds and upgrade, repair and renovate the Real Estate for the original Contract amount of \$1,000,000 . . . ." The Claim further states that Mr. Braswell performed work in the amount of \$1,000,000 at the request of J. Lloyd Tomer and that such work was completed on or about January 18, 2007, "when J. Lloyd Tomer directed [Mr. Braswell] not return to the property."

16. After discovering the mortgage and the mechanics lien, on September 17, 2008, the Simmons sent a letter to Ray Stillwell, Esq., counsel for Great River Enterprises. The letter expressly references the Possibility of Reverter granted to the Simmons in the Agreement and asserts that the Simmons' interest in the Property is senior to both the mortgage and the mechanics lien. A copy of the September 17, 2008 letter is attached as Exhibit 5.

17. On or about October 10, 2008, Meridian Bank was closed by the Illinois Department of Financial-Professional Regulation-Division of Banking, and the FDIC was named Receiver.

18. On or about January 5, 2009, the Simmons sent another letter to Mr. Stillwell, advising that a recently ordered title report revealed that the mechanics lien had not been resolved or discharged. The Simmons asserted that the failure to discharge the lien constituted "waste" within the meaning of Section 3.1 of the Agreement, and that such waste triggered the automatic acceleration of the Reversion Date. The Simmons demanded that Mr. Tomer take all steps necessary to have the lien discharged and that if no response curing such matters was received within 30 days of the letter, the Simmons would seek judicial recognition and enforcement of the reversion. A copy of the January 5, 2009 letter is attached as Exhibit 6.

19. On or about February 4, 2009, Donald M. Flack, Esq., sent a letter to Mr. Stillwell, with a carbon copy to counsel for the Simmons, advising Mr. Stillwell that he received a copy of the Simmons' January 5 letter and further stating that he represents

Mr. Tomer in litigation brought against him by Mr. Braswell. Mr. Flack advises that the parties in the litigation were awaiting the Court's ruling on a motion to dismiss. Mr. Flack also states: "If, as I expect, the Court dismisses the amended complaint, I will then immediately move to have the lien removed based on the Court's ruling. I believe attacking the lien within the current proceeding to be the most efficient method of so doing. In the event the case is not dismissed, I will file separate proceeding to attack the lien. I anticipate all of this will occur by the end of the month." A copy of the February 4, 2009 letter is attached as Exhibit 7.

20. On or about March 19, 2009, the Simmons learned that this Court granted Mr. Braswell leave to file an amended complaint.

21. On or about April 2, 2009, Mr. Braswell forwarded a copy of his Second Amended Complaint to the Simmons. In Count 10 of that Second Amended Complaint, Mr. Braswell seeks to foreclose on the mechanics lien and asserts that "other parties," including Meridian Bank and the "Trust of John and Jayne Simmons," may have or claim some interest in the Property and that interest is "subordinate and inferior to the rights of the Plaintiffs."

**COUNT I—DECLARATORY JUDGMENT  
AGAINST GREAT RIVER ENTERPRISES**

22. The Simmons reallege and incorporate by reference the allegations of Paragraphs 1-21 as if set forth fully herein.

23. An actual controversy exists between the Simmons on the one hand and Great River Enterprises on the other with respect to whether Great River Enterprises' waste of the Property has triggered the automatic acceleration of the Reversion Date set forth in Paragraph 3.1 of the Agreement, thereby automatically vesting title to the Property in the Simmons.

24. Pursuant to Paragraph 3.1 of the Agreement, Great River Enterprises had a duty to avoid "waste."

25. By encumbering the Property with a \$1,000,000 mechanics lien and failing to resolve that lien, Great River Enterprises has committed waste within the meaning of Paragraph 3.1 of the Agreement.

26. On and information and belief, Great River Enterprises' placement of a \$1,300,000 mortgage on the Property further constitutes waste within the meaning of Paragraph 3.1 of the Agreement.

27. The Simmons have been prejudiced by Great River Enterprises' waste of the Property and that waste has diminished the Property's value.

WHEREFORE, John and Jayne Simmons, as Trustees of the River House Trust, pray that this Court enter judgment against Great River Enterprises and

A. Declare that Great River Enterprises' failure to discharge the \$1,000,000 mechanics lien constitutes "waste" within the meaning of Paragraph 3.1 of the Agreement;

B. Declare that Great River Enterprises' placement of a \$1,300,000 mortgage on the Property constitute "waste" within the meaning of Paragraph 3.1 of the Agreement;

C. Declare that because of Great River Enterprises' "waste" of the Property, the Reversion Date set forth in the Agreement has accelerated automatically and the Property reverts to the Simmons; and

D. Grant the Simmons such other relief as may be equitable and just, including attorneys' fees.

**COUNT II—DECLARATORY JUDGMENT AGAINST  
FDIC IN ITS CAPACITY AS RECEIVER FOR MERIDIAN BANK**

28. The Simmons reallege and incorporate by reference the allegations of Paragraphs 1-21 as if set forth fully herein.

29. An actual controversy exists between the Simmons on the one hand and the FDIC on the other with respect to whether the Simmons take the property free and clear of the Meridian Bank mortgage.

30. The Agreement granted Defendant Great River Enterprises a fee simple determinable subject to a possibility of reverter.

31. The Simmons' possibility of reverter was duly recorded and reflected in a Trustee's Deed filed in the Madison County Recorder's Office.

32. The Trustee's Deed was publicly filed on February 12, 2007, long before December 8, 2007 when Great River Enterprises secured a mortgage on the Property.

33. Because of this public filing, Meridian Bank was on notice of the Simmons' Possibility of Reverter.

34. Meridian Bank's mortgage was subject to the determinable quality of the estate granted to Great River Enterprises, and because of the acceleration of the reversion date, Great River Enterprises' determinable fee was terminated and Meridian Bank's interest in the Property terminated.

WHEREFORE, John and Jayne Simmons, as Trustees of the River House Trust, pray that this Court enter judgment against the FDIC in its capacity as receiver for Meridian Bank and

A. Declare that the Simmons take the Property free and clear of the Meridian Bank mortgage; and

B. Grant the Simmons such other relief as may be equitable and just, including attorneys' fees.

**COUNT III—DECLARATORY JUDGMENT AGAINST TERRY BRASWELL**

35. The Simmons reallege and incorporate by reference the allegations of Paragraphs 1-21 as if set forth fully herein.

36. An actual controversy exists between the Simmons on the one hand and Mr. Braswell on the other with respect to whether the Simmons take the property free and clear of Mr. Braswell's mechanics lien.

37. On information and belief Great River Enterprises entered into a contract with Mr. Braswell to perform landscape work on the Property.

38. The Simmons were neither aware of nor did they consent to the work performed by Mr. Braswell.

39. The lien filed by Mr. Braswell only attached to the interest of Great River Enterprises, and that interest is a fee simple determinable subject to a possibility of reverter.

40. Because of the acceleration of the reversion date, Great River Enterprises' determinable fee has terminated and Mr. Braswell's interest in the Property has terminated.

WHEREFORE, John and Jayne Simmons, as Trustees of the River House Trust, pray that this Court enter judgment against Mr. Braswell and

A. Declare that the Simmons take the Property free and clear of Mr. Braswell's mechanics lien; and

B. Grant the Simmons such other relief as may be equitable and just, including attorneys' fees.

Respectfully submitted,

JOHN AND JAYNE SIMMONS,  
AS TRUSTEES OF THE RIVER  
HOUSE TRUST

By: Monica R. Pinciak-Madden  
One of their attorneys

William D. Heinz (#01176900)  
Monica R. Pinciak-Madden (#6270436)  
Jenner & Block LLP  
330 North Wabash  
Chicago, Illinois 60611

Dated: April 22, 2009