

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

Steven W. Atkinson, and H and A Realty & Development, LLC, Plaintiff, v. Ronald W. Prestage, and Prestage Farms of South Carolina, LLC, Defendants.	COMPLAINT 3:15-2950-TLW (JURY TRIAL DEMANDED)
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Plaintiffs, complaining of the Defendants, would allege as follows:

JURISDICTIONAL STATEMENT

1. The Court has subject-matter jurisdiction under 28 U.S.C. § 1331 (federal question) and 28 U.S.C. § 1337 (commerce and antitrust regulation), because this action arises under Section 1 and 2 of the Sherman Act (15 U.S.C. §§ 1-2) and Section 4 of the Clayton Act (15 U.S.C. § 15(a)). This Court has personal jurisdiction over Defendants because, inter alia, they: (a) transacted business throughout the United States, including in this District; (b) had substantial contacts with the United States, including in this District; and/or (c) were engaged in an illegal anticompetitive scheme that was directed at and had the intended effect of causing injury to persons residing in, located in, or doing business throughout the United States, including in this District.

2. Venue is proper in the United States District Court for the District of South Carolina because Defendants are found in, have agents in, and transact business in this District as provided in 28 U.S.C. § 1391(b) and (c) and in Sections 4 and 12 of the Clayton Act (15 U.S.C. §§ 12 and 15). Furthermore, this action is filed in this division pursuant to Local Rule 3.01(A)(1).

PARTIES AND FACTS

3. Steven W. Atkinson is a resident and citizen of Lee County, South Carolina and is the owner and managing-member of Steven Atkinson Farms LLC. At all times relevant herein, Plaintiff Atkinson was the owner of real property and personal property comprising a farm located at 3789 Sumter Highway, Bishopville, South Carolina.

4. Plaintiff, H and A Realty & Development, LLC (hereinafter H and A) is a limited liability company organized and existing pursuant to the laws of the State of South Carolina, and at all times pertinent herein maintained its principal place of business and was doing business in Lee County, South Carolina. Wayne R. Hancock is a resident and citizen of Lee County, and is the owner and managing-member of H and A Realty & Development, LLC.

5. Defendant, Prestage Farms of South Carolina, LLC. (hereinafter referred to as “Defendant LLC”) is a limited liability company organized and existing pursuant to the laws of the State of South Carolina, and at all times pertinent herein was doing business in Lee County, South Carolina and entered into contracts to be performed and which were performed in Lee County, South Carolina.

6. Upon information and belief, Defendant Ronald W. Prestage (hereinafter referred to as “Defendants Prestage”) is a resident and citizen of Kershaw County, and is an owner and managing-member of the Defendant LLC.

7. Defendants are in the business of producing and selling live turkeys. Defendant LLC contracts with prospective “Growers.” Growers are typically farmers in the community who develop turkey houses on their land, and then use those turkey houses to feed and house Defendants’ turkeys until they are big enough to harvest.

8. On or about August 23, 2012, Defendant LLC and Plaintiff Atkinson entered into a contract together whereby Plaintiff Atkinson agreed to become a Grower for Defendants. The initial term of the contract was to be three (3) years.

9. In their contract with Growers, including Plaintiff Atkinson, Defendant LLC promises to provide certain services, including:

- a. Prestage shall deliver to Grower turkeys that are approximately five weeks old. Grower agrees to grow and care for the growout turkeys.
- b. Grower agrees to provide suitable growout houses for the turkeys and also agrees to provide all labor, equipment, and water necessary for the proper growing and caring for the turkeys. Grower will permit Prestage or its representatives to inspect the turkeys and houses at any time. Prestage will provide, at no cost to the Grower, the shavings required for the growout houses.
- c. Prestage agrees to furnish Grower the necessary feed and medicine for the proper feeding and caring for the turkeys. Grower agrees to follow [Defendant's] program on medication and vaccination. Grower agrees to have necessary equipment to administer water medication.
- d. Title of the poultry and all items furnished by Prestage shall be and remain Prestage's. Should the Grower abandon, or fail to properly care for the turkeys, or violate the terms of this agreement, this agreement shall, at Prestage's option, be immediately terminated. Prestage or its designated representatives shall have the right to enter and care for the turkeys or remove the turkeys. The Grower shall be liable for any expenses incurred by Prestage in exercising its right pursuant to this paragraph.

10. The contract between Defendant LLC and Growers, however, including Plaintiff Atkinson, contains no language restricting a Grower's right to sell, lease, or partition their land, and certainly no language requiring Defendants' approval thereto, which restriction would be illegal and unlawful.

11. In the spring of 2014, Plaintiff Atkinson began contemplating selling his farm land. Plaintiff Atkinson spoke with another local farmer who offered him One million one hundred

thousand and 00/100 (\$1,100,000.00) dollars. Plaintiff Atkinson believed the fair market value of the farm was higher and declined the offer.

12. Plaintiff Atkins thereafter contracted with Plaintiff H and A, and specifically its owner, Wayne Hancock, to list, market and sell his farm at 3789 Sumter Highway, Bishopville, South Carolina. At all times relevant herein, Plaintiff Atkinson had a contract with Plaintiff Hancock whereby Hancock would receive six (6%) percent commission of any consummated agreement to sell the farm at 3789 Sumter Highway.

13. As a result of Plaintiff H and A's efforts, on or about September 4, 2014, Plaintiff Atkinson entered into a sales contract with prospective buyers of the farm at 3789 Sumter Highway. The agreed-upon price of the farm, per the duly executed contract, was One million four hundred thousand and 00/100 (\$1,400,000.00) dollars.

14. When Plaintiff Atkinson phoned the Defendant Prestage, who at all times pertinent herein was acting on behalf of and as an agent, employee, owner and representative of Defendant LLC, to notify him of the sales contract, Defendant Prestage notified Plaintiff Atkinson he would not sign or award any contract allowing the purchasers to grow turkeys because he believed the agreed-upon land sale price was too high. Furthermore, Defendant Prestage told Plaintiff Atkinson he could not, under any circumstances, sell his farm for more than \$1,100,000.00 or else there would be no contract to grow turkeys.

15. Plaintiff Atkinson continued to negotiate with the prospective buyers, and an agreement was reached and an Addendum was attached to the earlier sales agreement, whereby Plaintiff Atkinson agreed to sell the land for \$1,100,000.00 and agreed to sell various farming and turkey growing equipment and implements and miscellaneous personal property, which belonged

solely to Plaintiff Atkinson and not Defendants, to the third-party buyer for an additional \$300,000.00, for a total sales price of the originally agreed upon \$1,400,000.

16. Thereafter, Hancock received a telephone call from another interested potential purchaser who indicated verbally he would be willing to pay One million five hundred thousand and 00/100 (\$1,500,000.00).

17. Again, Plaintiff Atkinson contacted Defendant Prestage to notify him of both the new prospective buyer, as well as terms of the Addendum to the original sale. Defendant Prestage again adamantly stated he did not care about the “new terms” of the deal or the additional consideration being provided by Plaintiff Atkinson to the potential purchasers and again stated would not sign or award any grower contract with any buyer of the farm if the total sales prices was more than \$1,100,000.00.

18. Because of the Defendants’ intentional, unjustifiable and unlawful actions, the potential agreement for the listed price of \$1,500,000.00 was abandoned, and the sale agreement for \$1,400,000.00 was breached.

19. On or around October 24, 2014, Plaintiff Atkinson entered into a contract with the original potential buyer, the farmer who had originally offered 1,100,000.00, since he made the first offer in that amount. Plaintiff H and A did not receive any commission since Plaintiff Atkinson had already procured the offer before contracting with it.

20. On or about October 28, 2014, Hancock contacted Defendant Prestage on behalf of Plaintiff Atkinson and Plaintiff H and A, and although Defendants’ contracts with Growers do not allow Defendants to approve sales or sale prices of land or turkey houses, Hancock asked

specifically, “Do I need to have your company approve any sales (and prices) of houses in the future before we market them?”

21. The next day, in a reply to Hancock, Defendant Prestage stated:

Have tried to call you several times. **Bottom line is the farms aren’t worth much at all without a contract with me, and I won’t sign a contract with anyone with a risky chance of success as a grower**, either because they are not intending to be appropriately involved in the day to day management of the farm, or are putting themselves in an impossible cash flow situation by paying more for a farm that it is worth, resulting in a negative cash flow. Stephen (sic) was trying to sell a farm for 150% of his purchase price, used when he bought it, on a farm that has already run its initial contract, and to customers that could build a brand new farm for less money. In addition I don’t waste my time on deals the bank won’t finance. Most appraisals of turkey farms fail to recognize that [Defendant] owns the feed system and feed bulk bins on the farm as well. In the future I would suggest that if (sic) are approached about listing a farm you contact me so we can avoid either of us wasting time or causing hurt feelings.

22. As a direct and proximate result of Defendants’ actions, Plaintiffs have suffered actual damages and pecuniary losses. Plaintiffs believe they are entitled to judgment against the Defendants, jointly and severally, for actual damages as well as treble damages, punitive damages, pre-judgment interest, attorney’s fees and costs, for their unlawful and illegal and intentional conduct and misconduct.

**FOR A FIRST CAUSE OF ACTION
(Violation of the Sherman Antitrust Act, 15 U.S.C. § 2)**

23. Plaintiffs restate and reallege each and every allegation stated herein as if repeated verbatim.

24. Defendant LLC has monopoly power in the turkey farm market. Moreover, Defendant LLC also has geographic monopoly power in Lee, Sumter, and Kershaw Counties.

25. Through Defendant LLC’s anticompetitive use of restricting its growers from the transferability of their farms as described herein, LLC has willfully maintained monopoly power

in the turkey farm market. This conduct has harmed competition in that market, making the supply and selection of products available lower in the turkey farm market than they would be in a competitive market. The number and effectiveness of competitors have also been diminished by Defendant LLC's unlawful conduct.

26. Defendant LLC has acted with specific intent to monopolize the turkey farm market, by forcing farmers to sell their property at below-market prices in exchange for its promises to enter into grower contracts with the third-party buyers. This conduct is intended to stifle competition and restrict consumer choice.

27. The anticompetitive conduct described herein has damaged Plaintiffs and is in violation of the Sherman Antitrust Act, 15 U.S.C. § 2.

28. As a direct and proximate result of Defendants' actions, Plaintiffs have suffered actual damages and pecuniary losses. Plaintiffs believe they are entitled to judgment against the Defendants, jointly and severally, for actual damages as well as treble damages, punitive damages, pre-judgment interest, attorney's fees and costs, for their violation of the Sherman Antitrust Act.

**FOR A SECOND CAUSE OF ACTION
(Violation of the Sherman Antitrust Act, 15 U.S.C. § 1)**

29. Plaintiffs restate and reallege each and every allegation stated herein as if repeated verbatim.

30. Through Defendant LLC's anticompetitive use of restricting its growers from the transferability of their farms as described herein, LLC has willfully exercised the restraint of trade in the turkey farm market. This conduct constitutes a boycott, and has harmed competition in that market, making the supply and selection of products available lower in the turkey farm market than they would be in a competitive market. The number and effectiveness of competitors have

also been diminished by Defendant LLC's unlawful conduct.

31. Defendant LLC has acted with specific intent to restrain free trade and boycott in the turkey farm market, by forcing farmers to sell their property at below-market prices in exchange for its promises to enter into grower contracts with the third-party buyers and refusing to deal with those who are not in agreement. This conduct is intended to stifle competition, restrict trade, and restrict consumer choice.

32. The anticompetitive conduct described herein has damaged Plaintiffs and is in violation of the Sherman Antitrust Act, 15 U.S.C. § 1.

33. As a direct and proximate result of Defendants' actions, Plaintiffs have suffered actual damages and pecuniary losses. Plaintiffs believe they are entitled to judgment against the Defendants, jointly and severally, for actual damages as well as treble damages, punitive damages, pre-judgment interest, attorney's fees and costs, for their violation of the Sherman Antitrust Act.

WHEREFORE, having set forth their Complaint, Plaintiffs would respectfully request judgment against the Defendants, jointly and severally, to be determined by the trier of fact; for the costs and disbursements of this action; for trial by jury, for actual damages, punitive damages, costs, attorney's fees, and any other relief the Court may deem just and equitable.

[Signature on Following Page]

Respectfully submitted,

HOPKINS LAW FIRM, LLC

/s/William E. Hopkins, Jr.

William E. Hopkins, Jr. (Fed. I.D. #6075)

12019 Ocean Highway

Post Office Box 1885

Pawleys Island, South Carolina 29585

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bill@hopkinsfirm.com

Pawleys Island, SC

July 24, 2015

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

District of South Carolina

Steven W. Atkinson and H and A Realty &
Development, LLC

Plaintiff(s)

v.

Ronald W. Prestage and Prestage Farms of South
Carolina, LLC

Defendant(s)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* Ronald W. Prestage
180 Peck Woods Road
Camden, SC 29020

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are: William E. Hopkins, Jr., Esq.
HOPKINS LAW FIRM, LLC
PO Box 1885
Pawleys Island, SC 29585

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

JS 44 (Rev. 12/12)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Steven W. Atkinson and H and A Realty & Development, LLC,

DEFENDANTS

Ronald W. Prestage and Prestage Farms of South Carolina, LLC

(b) County of Residence of First Listed Plaintiff Lee
(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant Kershaw
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

(c) Attorneys (Firm Name, Address, and Telephone Number)

William E. Hopkins, Jr., Esq.
HOPKINS LAW FIRM, LLC
P.O. Box 1885, Pawleys Island, SC 29585 (843) 314 - 4202

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|---------------------------------------|---------------------------------------|---|----------------------------|----------------------------|
| Citizen of This State | ☒ 1 | ☒ 1 | Incorporated or Principal Place of Business In This State | ☐ 4 | ☐ 4 |
| Citizen of Another State | ☐ 2 | ☐ 2 | Incorporated and Principal Place of Business In Another State | ☐ 5 | ☐ 5 |
| Citizen or Subject of a Foreign Country | ☐ 3 | ☐ 3 | Foreign Nation | ☐ 6 | ☐ 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
☐ 110 Insurance ☐ 120 Marine ☐ 130 Miller Act ☐ 140 Negotiable Instrument ☐ 150 Recovery of Overpayment & Enforcement of Judgment ☐ 151 Medicare Act ☐ 152 Recovery of Defaulted Student Loans (Excludes Veterans) ☐ 153 Recovery of Overpayment of Veteran's Benefits ☐ 160 Stockholders' Suits ☐ 190 Other Contract ☐ 195 Contract Product Liability ☐ 196 Franchise	PERSONAL INJURY ☐ 310 Airplane ☐ 315 Airplane Product Liability ☐ 320 Assault, Libel & Slander ☐ 330 Federal Employers' Liability ☐ 340 Marine ☐ 345 Marine Product Liability ☐ 350 Motor Vehicle ☐ 355 Motor Vehicle Product Liability ☐ 360 Other Personal Injury ☐ 362 Personal Injury - Medical Malpractice	PERSONAL INJURY ☐ 365 Personal Injury - Product Liability ☐ 367 Health Care/Pharmaceutical Personal Injury Product Liability ☐ 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY ☐ 370 Other Fraud ☐ 371 Truth in Lending ☐ 380 Other Personal Property Damage ☐ 385 Property Damage Product Liability	☐ 625 Drug Related Seizure of Property 21 USC 881 ☐ 690 Other LABOR ☐ 710 Fair Labor Standards Act ☐ 720 Labor/Management Relations ☐ 740 Railway Labor Act ☐ 751 Family and Medical Leave Act ☐ 790 Other Labor Litigation ☐ 791 Employee Retirement Income Security Act IMMIGRATION ☐ 462 Naturalization Application ☐ 465 Other Immigration Actions	☐ 422 Appeal 28 USC 158 ☐ 423 Withdrawal 28 USC 157 PROPERTY RIGHTS ☐ 820 Copyrights ☐ 830 Patent ☐ 840 Trademark SOCIAL SECURITY ☐ 861 HIA (1395ff) ☐ 862 Black Lung (923) ☐ 863 DIWC/DIWW (405(g)) ☐ 864 SSID Title XVI ☐ 865 RSI (405(g)) FEDERAL TAX SUITS ☐ 870 Taxes (U.S. Plaintiff or Defendant) ☐ 871 IRS—Third Party 26 USC 7609	☐ 375 False Claims Act ☐ 400 State Reapportionment ☒ 410 Antitrust ☐ 430 Banks and Banking ☐ 450 Commerce ☐ 460 Deportation ☐ 470 Racketeer Influenced and Corrupt Organizations ☐ 480 Consumer Credit ☐ 490 Cable/Sat TV ☐ 850 Securities/Commodities/Exchange ☐ 890 Other Statutory Actions ☐ 891 Agricultural Acts ☐ 893 Environmental Matters ☐ 895 Freedom of Information Act ☐ 896 Arbitration ☐ 899 Administrative Procedure Act/Review or Appeal of Agency Decision ☐ 950 Constitutionality of State Statutes

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from Another District (specify)
- ☐ 6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
15 U.S.C. § 1, 15 U.S.C. § 15(a).

Brief description of cause:
Antitrust

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

CHECK YES only if demanded in complaint.

JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE
07/24/2015

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG JUDGE

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

Steven W. Atkinson, and H and A Realty & Development, LLC, Plaintiffs, v. Ronald W. Prestage, and Prestage Farms of South Carolina, LLC, Defendants.	Civil Action No.: PLAINTIFFS' ANSWERS TO LOCAL RULE 26.01 INTERROGATORIES
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The Plaintiffs, Steven W. Atkinson and H and A Realty & Development, LLC, answering the Interrogatories pursuant to Local Rule 26.01, would show:

- (a) State the full name, address, and telephone number of all persons or legal entities who may have a subrogation interest in each claim and state the basis and extent of said interest.

Answer: None of which Plaintiff is aware.

- (b) As to each claim, state whether it should be tried jury or non-jury and why.

Answer: All of Plaintiff's claims should be tried by a jury pursuant to the United States Constitution and the South Carolina Constitution.

- (c) State whether the party submitting these responses is a publicly owned company and separately identify: (1) each publicly owned company of which it is a parent, subsidiary, partner, or affiliate; (2) each publicly owned company which owns ten percent or more of the outstanding shares or other indicia of ownership of the party; and (3) each publicly owned company in which the party owns ten percent or more of the outstanding shares.

Answer: Not applicable.

- (d) State the basis for asserting the claim in the division in which it was filed (or the basis of any challenge to the appropriateness of the division).

Answer: Plaintiffs are residents of this division and the actions complained of occurred in this division.

- (e) Is this action related in whole or in part to any other matter filed in this District, whether civil or criminal? If so, provide: (1) a short caption and the full case number of the related action; (2) an explanation of how the matters are related; and (3) a statement of the status of the related action. Counsel should disclose any cases which may be related regardless of whether they are still pending. Whether cases are related such that they should be assigned to a single judge will be determined by the Clerk of Court based on a determination of whether the cases: arise from the same or identical transactions, happenings or events; involve the identical parties or property; or for any other reason would entail substantial duplication of labor if heard by different judges.

Answer: No.

[Signature on Following Page]

Respectfully submitted,

HOPKINS LAW FIRM, LLC

/s/ William E. Hopkins, Jr.
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12019 Ocean Highway
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Attorney for the Plaintiffs

July 24, 2015