

1
2
3
4 IN THE CIRCUIT COURT OF THE STATE OF OREGON
5 FOR THE COUNTY OF POLK

6	WILLAMETTE VALLEY VINEYARDS,)	No.
7	INC., an Oregon corporation,)	
)	COMPLAINT
8	Plaintiff,)	
)	(Trespass; Conversion; Negligence;
9	vs.)	Trespass to Chattels)
)	
10	FIVE CENT FARM, INC., an Oregon)	Claim Amount: \$413,780.24
	corporation; MYRON A. NICHOLS; and)	Filing Fee: \$531.00
11	JEFFREY NICHOLS,)	Fee Authority: ORS 21.160(1)(c)
)	
12	Defendants.)	Not Subject to Mandatory Arbitration

13 Plaintiff, by and through its attorney, Ryan Hunt of Garrett Hemann Robertson PC, hereby
14 alleges as follows:

15 1.

16 Plaintiff has a sole source contract for high-end commercial pinot noir wine grapes grown
17 at Elton Vineyards located at 22500 Ingram Lane NW, Salem, Polk County, Oregon 97304.

18 2.

19 Defendants Jeffrey Nichols, Myron Nichols and Five Cent Farm, Inc. (“Five Cent Farm”)
20 grow grass seed to the west of the vineyard located at 22500 Ingram Lane NW, Salem, Polk
21 County, Oregon 97304.

22 3.

23 On or about May 10, 2013, plaintiff’s representatives began to notice symptoms related to
24 an herbicide drift.

25 ////

26 ////

GARRETT HEMANN ROBERTSON P. C.
210 WILLAMETTE PROFESSIONAL CENTER
1011 COMMERCIAL STREET N.E.
P.O. BOX 749, SALEM, OREGON 97308-0749
TELEPHONE (503) 581-1501 TELEFAX (503) 581-5891

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

4.

Plaintiff's representatives instituted a Department of Agriculture investigation into the herbicide drift on June 26, 2013.

5.

Upon information and belief, Jeffrey Nichols, on behalf of Five Cent Farm and its principal owner, Myron Nichols, applied herbicides in the grass seed field adjacent to the vineyard for which plaintiff had a sole-source contracting relationship. Upon information and belief, Jeffrey Nichols, Five Cent Farm, nor Myron Nichols are licensed pesticide applicators.

6.

The Department of Agriculture continued its investigation, which concluded on or about November 14, 2013. The Department of Agriculture ultimately concluded that a herbicide drift had occurred, which was caused by the actions of Jeffrey Nichols, on behalf of Myron Nichols and Five Cent Farm, in March 2013.

7.

On June 11, 2015, plaintiff, through counsel, provided a copy of the report generated by the Department of Agriculture to the insurance carrier and agent of defendants, pursuant to ORS 12.272.

8.

Due to the herbicide drift caused by the actions of Jeffrey Nichols and Five Cent Farm alleged above, plaintiff suffered a significant loss of high-end commercial pinot noir wine grapes.

9.

Approximately 12.7106 tons of high-end commercial pinot noir wine grapes were damaged and could not be harvested because of the actions of Jeffrey Nichols and Five Cent Farm alleged above. This resulted in a total loss of 826 cases of wine, for a total economic loss of \$413,780.24.

////

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

10.

The actions of Jeffrey Nichols and Five Cent Farm in applying herbicides and pesticides constitute an abnormally dangerous activity, resulting in strict liability for any damages incurred related to those actions.

FIRST CLAIM FOR RELIEF
(Trespass)

11.

Plaintiff realleges and incorporates the allegations contained in paragraphs 1 through 10 above.

12.

Defendants' action of spraying herbicide that drifted onto plaintiff's property is unauthorized entry on the interests of plaintiff, which constitutes trespass. Defendants' trespass disturbed plaintiff's interest in the right to exclusive possession of grapes on the above-referenced real property.

13.

Defendants' actions and inactions as alleged above in spraying herbicides onto plaintiff's high-end commercial pinot noir wine grapes have resulted in damages to plaintiff, including, but not limited to, total lost sales of \$413,780.24.

14.

Pursuant to ORS 105.810 through 105.815, because defendants' actions damaged plaintiff's produce on the real property, in addition to plaintiff's economic damages plaintiff is entitled to treble and/or double damages as provided by statute. In addition, pursuant to ORS 105.810, in addition to treble and/or double economic damages, plaintiff is entitled to collect any and all attorney fees incurred to prosecute this claim.

////

////

1 **SECOND CLAIM FOR RELIEF**

2 **(Conversion)**

3 15.

4 Plaintiff realleges paragraphs 1 through 14 above as though set fully herein.

5 16.

6 Defendants wrongfully and intentionally exercised dominion and control over plaintiff's
7 property in the form of high-end pinot noir wine grapes. Defendants exercised dominion and
8 control such that defendants should be required to pay the full value of said damaged and
9 destroyed property in the amount of \$413,780.24.

10 **THIRD CLAIM FOR RELIEF**

11 **(Negligence)**

12 17.

13 Plaintiff realleges paragraphs 1 through 16 above as though set forth fully herein.

14 18.

15 Defendants had a duty to apply herbicides to their property in such a way as to avoid
16 damage to plaintiff's property. Defendants failed to use reasonable care to avoid risk of
17 foreseeable harm to plaintiff's property by allowing the herbicide and/or pesticides applied on the
18 property of Five Cent Farm to drift onto plaintiff's wine grapes.

19 19.

20 As a result of defendants' negligence, plaintiff's property was damaged and/or destroyed,
21 resulting in economic damage to plaintiff in the amount of \$413,780.24.

22 20.

23 In addition, as alleged above, because they were engaged in an abnormally dangerous
24 activity, defendants are strictly liable for any resulting damages.

25 ////

26 ////

1 **FOURTH CLAIM FOR RELIEF**

2 **(Trespass to Chattels)**

3 21.

4 Plaintiff realleges paragraphs 1 through 22 above as though set forth fully herein.

5 22.

6 Defendants' action of spraying herbicide that drifted onto plaintiff's property is
7 unauthorized interference with the interests of personal property of plaintiff therein, which
8 constitutes trespass of chattels.

9 23.

10 As an alternate theory of relief, defendants' actions resulted in the trespass to chattels in
11 that there was significant interference with the rights of personal property of plaintiff as alleged
12 above.

13 24.

14 As a result of defendants' actions, defendants trespassed to plaintiff's chattels, such that
15 defendants should be required to pay the full value of said damage and destroyed property in the
16 amount of \$413,780.24.

17
18 WHEREFORE, plaintiff prays for judgment against defendants as follows:

19 1. On plaintiff's First Claim for Relief, economic damages in the amount of
20 \$413,780.24 plus treble and/or double damages, plus any and all attorney fees incurred to
21 prosecute the claim pursuant to ORS 105.810;

22 2. On plaintiff's Second Claim for Relief, economic damages in the amount of
23 \$413,780.24;

24 3. On plaintiff's Third Claim for Relief, economic damages in the amount of
25 \$413,780.24;

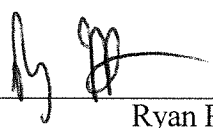
26 ////

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

- 4. On plaintiff's Fourth Claim for Relief, economic damages in the amount of \$413,780.24;
- 5. On all of plaintiff's Claims for Relief, pre- and post-judgment interest at the statutory rate, to be determined by the court; and
- 6. Such other relief as the court may deem just and equitable.

DATED this 21 day of July 2015.

GARRETT HEMANN ROBERTSON P.C.



Ryan P. Hunt
(OSB No. 023313)
rhunt@ghrlawyers.com
Of Attorneys for Plaintiff