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Re: *Rossi, et al. v. Brockway, et al.*
Civil Action No. 290-S

Dear Counsel:

This letter contains my decision on plaintiffs' amended motion for a temporary restraining order filed on March 5, 2004. For the reasons set out briefly below, the motion is denied.¹

The plaintiffs own and reside on property in Sussex County near Lewes. The plaintiffs, along with another property owner, have an ownership interest in a private road adjacent to their property. The defendants also own and reside on property that is adjacent to this private road. The defendants' ownership interest in the road, however, is a subject of dispute—specifically, an ongoing ejectment action in Superior Court.

After plaintiffs initiated the ejectment action in Superior Court, the defendants dumped clamshells, accompanied by the carcasses of fish and chickens, on the private road. While the clamshells remain, the other organic debris has been conveniently removed by the local bird population

¹ A hearing was held on the motion in my Chambers pursuant to 10 *Del. C.* § 344, on Monday, March 15, 2004. I advised counsel of my ruling at the end of the hearing. This letter memorializes my ruling for the record.

(more precisely, by a congregation of *cathartes aura* and *coragyps atratus*, or turkey vultures and black vultures). Before me is the plaintiffs' request that this Court order the defendants to promptly remove the clamshells.

Although the dumping of the clamshells on the private road was certainly unneighborly and clearly annoying, it does not rise to the level of "imminent, irreparable harm" as required under Delaware's jurisprudence.² There is perhaps even a colorable argument that the spreading of clamshells on the road (a standard way of improving unpaved roads in Sussex County) caused no harm at all. To the extent that the noxious odor of decaying carcasses constituted an irreparable harm, nature provided a prompt solution.

Any harm caused by the placement of clamshells is remediable with money damages. Accordingly, the motion for a temporary restraining order is denied.

IT IS SO ORDERED.

Very truly yours,

/S/ William B. Chandler III

William B. Chandler III

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² See, e.g., *Village of Manley Civic Ass'n v. Becker*, 1997 Del. Ch. LEXIS 176, at *10 (Del. Ch. Dec. 17, 1997).