

PEARL G. SIMMONS, as Settlor of an Irrevocable
Living Trust of Eugene M. Simmons and Pearl G. Simmons,

File No. 2023-985

Petitioner,

-v-

**AFFIDAVIT OF
RESPONDENTS
PHILIP CRIM AND
SIMMONS FARM
AT LIMELEDGE LLC
IN OPPOSITION TO
THE ORDER TO
SHOW CAUSE**

ALAN SIMMONS, MICHAEL SIMMONS, BRIAN
SIMMONS, KEVIN SIMMONS, MARK SIMMONS,
MARCIA SIMMONS CRIM and JAMES SIMMONS as
Trustees of the Irrevocable Living Trust of Eugene M.
Simmons and Pearl G. Simmons, PHILIP CRIM, as an
Individual and SIMMONS FARM AT LIMELEDGE,
L.L.C.,

Respondents.

STATE OF NEW YORK)
) ss.:
COUNTY OF ONONDAGA)

PHILIP CRIM, being duly sworn, deposes and says:

1. I, **PHILIP CRIM**, am over the age of 18, and of sound mind, and a grandchild of the Petitioner, Pearl Simmons, and a Respondent in the above-referenced action. This Affidavit is submitted on my behalf individually in Opposition to the Petitioner’s Order to Show Cause (“OTSC”), and the allegations contained in the Petition in its entirety, incorrectly filed as, Pearl G. Simmons, Settlor of “an Irrevocable Living Trust of Eugene M. Simmons and Pearl G. Simmons,” correctly designated as, “The Eugene and Pearl Simmons Irrevocable Income Only Trust” (The Simmons Irrevocable Income-Only Trust “IIOT”). *See* Petition, Article I, Title of Trust, page 3, attached as Exhibit “C.”
2. This Affidavit is also submitted on behalf of Simmons Farm at Limeledge LLC (“LLC”), created on or about November 4, 2021, which leases 5.43 acres of land from the Trust property located at 1686 State Route 321, Elbridge, New York for the proposes of creating the Limeledge Botanical Garden and Arboretum, and eventually working toward cleaning up 224.14 of the Trust property to restore the family property. *See* the

attached LLC Articles of Organization and Filing receipt, attached as Exhibit “1”; *see also* the Minutes of the Trust authorizing the Lease, attached as Exhibit “2”; *see also* a copy of the Lease, attached as Exhibit “3.”

3. After securing the Lease, I applied to the State of New York, Educational Department, for a charter to develop and operate an Arboretum on the parcels leased from the Trust, which was provisionally approved on or about March 13, 2023. *See* the attached copy of the NYS Provisional Charter, attached as Exhibit “4.”
4. I am thoroughly familiar with the underlying facts of this action based upon my relationship with my grandmother, the Petitioner, and my relationships and interactions with the Respondents, as well as, as Leaseholder of a parcels of Trust property held by the Simmons IIOT, and based upon my interactions with the other Leaseholder of parcels of Trust property, non-party James Manley, and as owner of the LLC. *See* a copy of the non-party Lease, attached as Exhibit “5.”
5. Contrary to the OTSC/Petition, the Respondents, based upon my own personal observations, Mark Simmons, Kevin Simmons and Brian Simmons, have not acted in a fiduciary capacity by their actions by engaging in self-dealing, and more significantly, in a pattern of behavior which, as evidenced by their instant OTSC/Petition, appears to attempt to take advantage of my mother, and there actions are also contrary to the LLC’s interest as Lessee in several instances where in they attempted to thwart the development of the Limeledge Botanical Garden and Arboretum (“the Arboretum”); further any Court order permitting one (1) Trustee, namely currently Respondent, Mark Simmons, to act alone, would provide an opportunity to invalidate the Arboretum’s Lease, causing damage to me personally, and the LLC, thereby negatively impacting the Trust.
6. For the Court’s reference, the Arboretum project is a result of my passion for the environment, my love for the community, which is also aligned the intentions of my grandfather for the property, the decedent, as well as a cumulation of my education and experience as a forest ecologist, which I summarize below.
7. On or about May 2008, I attended SUNY College of Environmental Science and Forestry and received a Bachelor of Science (B.S.) Degree in Environmental Sciences.
8. On or about May 2010, I earned my Bachelor of Sciences (B.S.) in Biological Sciences with a focus in Plant Biology at Arizona State University.

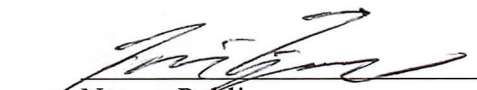
9. Afterwards, I obtained a Graduate Certificate in University Teaching at West Virginia University.
10. In 2020, I attended West Virginia University, and received a Ph.D. in Biology with a focus in Environmental Plant Biology.
11. I am also proud to share my latest contribution to a paper in the *Journal of Ecology*, a preeminent journal in my field, which I co-authored this year: "Evenness Mediates the Global Relationship Between Forest Productivity and Richness." My other published papers include "Phenotypic and Physiological Responses to Salt Exposure in Sorghum Reveal Diversity Among Domesticated Landraces" in the *American Journal of Botany* (2020), "Extracellular Soil Enzyme Activities in High-Elevation Mixed Red Spruce Forests in Central Appalachia, U.S.A." in *Forests* (2020), "Climatic Controls of Decomposition Drive the Global Biogeography of Forest-Tree Symbioses" in *Nature* (2019), and "Soil and Tree Nutrient Status of High-Elevation Mixed Red Spruce (*Picea Rubens* Sarg.) and Broadleaf Deciduous Forests" in *Soil Systems* (2019).
12. In addition, I gained experience in teaching plant physiology and general biology through my employment as a Graduate Teaching Assistant at West Virginia University.
13. Following the forgoing employment, I began my teaching career at the College of Saint Rose as a Visiting Assistant Professor of Biology.
14. Currently, I serve as Assistant Professor of Biology for The College of Saint Rose.
15. Individually, and on behalf of the LLC, I object to the allegations in the OTSC and as stated in the Petitioner which attempts to characterize my purchase of property from the Trust and/or my Lease of Trust Property for the Arboretum as self-dealing.
16. Currently, the LLC rents approximately 5.43 acres at \$600.00 annually in 2023 which equates to approximately \$110.50 per acre annually. See a copy of the Lease, attached as Exhibit "3."
17. Upon information and belief, non-party, Jim Manley, ("the farmer") is leasing 115.1 acres at \$10,700 in 2023, which equates to \$92.96 per acre annually. See a copy of the non-party Lease, attached as Exhibit "5."
18. Therefore, based upon documentary evidence, the Arboretum's rent of Trust property is just shy of 19% *more per acre* than the farmer for mostly untillable, substandard acreage, acceptable to grow trees but otherwise not yet capable of generating revenue.

19. The Arboretum is situated upon parcels that require significant cleanup and maintenance tasks across the entire site, to rejuvenate the land, which was mostly abandoned at best, at worst negatively impacted by the actions of Respondents Mark Simmons, Kevin Simmons, and Brian Simmons.
20. Neither I, nor the LLC, have any authority to encroach on the farmer's Leasehold or claim the barns. In fact, recently, the farmer asked me to take additional acreage that is currently poor-quality hayfield off of his hands as well.
21. At no time was it my intention, nor were there any actions taken to attempt to prohibit my grandmother from enjoying gardening on the Trust property. In fact, I welcome her to do so, and sincerely hopes she contacts me to share her knowledge and experience to develop the Arboretum.
22. In sum, for the areas I am actively utilizing per my Lease Agreement, the rent is actually considerably higher rate than the other tenant for otherwise land that is inferior quality for agriculture, which is contrary to the allegations contained in the OTSC and Petition, and as demonstrated by documentary evidence.
23. Moreover, upon information and belief, when the Trustees/Respondents came to be aware the Trust was low on funds, Respondent/Trust Administrator, Michael Simmons, asked if any family members had an interest in purchasing in the landlocked parcel consisting of 10.28 acres referenced in OTSC/Petition. In response, I stepped up to make an offer to purchase that one parcel of landlocked Trust property for approximately \$10,000.00, which upon information and belief, created income for the Trust; contrary to the allegations at no time did I engage in self-dealing, nor did I purchase property below market share as a favor to my mother, Marica Simmons Crim, the Petitioner's only daughter, one of the original co-Trustees, and Respondent, or myself; in fact, per the Town of Elbridge I paid *over full market value*. See a copy of the Property Tax Details confirming 2022 market value of \$5,882.00, attached Exhibit "6."
24. Therefore, based upon the foregoing, I respectfully request individually, and on behalf of the LLC, that the Court deny the relief demanded in Petitioner's Order to Show Cause; reinstate the Trustees as intended by my grandfather; dismiss the Petition in its entirety; issue an Order preventing the Respondents Mark Simmons, Brian Simmons, and Kevin Simmons from interfering with the Arboretum sanctioned by the State of New York; and for such further relief that this Court deems just and proper.



PHILIP CRIM

Sworn to before me this
13 day of June 2023



Notary Public

DAVID J BRISSON
NOTARY PUBLIC STATE OF NEW YORK
RENSSELAER COUNTY
LIC. #01BR6119067
COMM. EXP. NOVEMBER 22, 2024