

BEFORE THE CHANCERY COURT OF MADISON COUNTY, MISSISSIPPI

MISSISSIPPI BOARD OF LICENSURE
FOR PROFESSIONAL
ENGINEERS AND SURVEYORS

FILED
MADISON COUNTY

PLAINTIFF

V.

DEC 11 2020

Cause No. 2017-902-W

BRENT MELTON
And VIZALINE, LLC

RONNY LOTT, CHANCERY CLERK
BY: *Rita Carpenter* D.C.

DEFENDANTS

CONSENT DECREE

This Consent Decree is made and agreed upon by and between the Mississippi Board of Licensure for Professional Engineers and Surveyors (“the Board”) and Vizaline, LLC and Brent Melton (collectively, “Vizaline”). The Board and Vizaline shall jointly be referred to as the “Parties.”

RECITALS

WHEREAS, Vizaline has been selling its services in Mississippi since April 2014.

WHEREAS, on September 21, 2017, the Board filed suit against Vizaline in the case captioned *Mississippi Board of Licensure for Professional Engineers and Surveyors v. Brent Melton and Vizaline LLC*, No. 2017-902-W, in the Chancery Court of Madison County, Mississippi, alleging that Vizaline was violating Mississippi law, and specifically Mississippi Code §§ 73-13-73 and 73-13-95, by engaging in the practice of surveying while not being license by the Board. The Board’s Complaint sought injunctive relief and an order for disgorgement. The allegations in the Board’s Complaint are incorporated herein by reference.

WHEREAS, on July 7, 2018, Vizaline filed and served its Answer and Affirmative Defenses to the Board’s Complaint. Vizaline disputed the Board’s claim that it was engaged in the practice of surveying and further pled that its business was speech protected by the First

Amendment to the United States Constitution. Vizaline's Answer and Affirmative Defenses are incorporated herein by reference.

WHEREAS, on August 2, 2018, Vizaline filed suit against the members of the Board in their official capacities, in the case captioned *Vizaline, LLC and Brent Melton v. Sarah Tracy, PE, et al.*, No. 2018-724-B, in the Chancery Court of Madison County, alleging that the Board Members' actions to enforce Mississippi Code §§ 73-13-73 and 73-13-95 against Vizaline were in violation of Vizaline's First Amendment rights. Vizaline's Complaint sought declaratory and injunctive relief, as well as attorneys' fees and costs. The allegations in Vizaline's Complaint are incorporated herein by reference.

WHEREAS the Board Members removed Vizaline's suit to the United States District Court for the Southern District of Mississippi.

WHEREAS, on December 18, 2018, the United States District Court for the Southern District of Mississippi dismissed Vizaline's Complaint on the grounds that the First Amendment did not apply to Mississippi's surveyor licensing laws.

WHEREAS, on February 6, 2019, the Board issued its Declaratory Opinion regarding The Practice of Surveying in an effort to clarify the statutes governing the practice of surveying in Mississippi. The provisions of the Board's Declaratory Opinion are incorporated herein by reference.

WHEREAS, on February 14, 2020, the United States Court of Appeals for the Fifth Circuit reversed the dismissal and remanded on the grounds that the First Amendment does apply to Mississippi's surveyor licensing laws. The Fifth Circuit's opinion and holding are incorporated herein by reference.

WHEREAS, on April 30, 2020, the Board Members filed and served their Answer and Counterclaim to Vizaline's Complaint disputing Vizaline's claims and then withdrew their Counterclaim. The allegations in the Board Members' Answer are incorporated herein by reference.

WHEREAS, in order to resolve their differences, the Parties have agreed that it is reasonable and necessary to enter into this Consent Decree.

NOW, THEREFORE, IT IS HEREBY ORDERED PURSUANT TO AGREEMENT OF THE PARTIES AS FOLLOWS:

1. It is stipulated and agreed that an actual case and controversy exists sufficient to enter the instant Consent Decree.
2. This Court has jurisdiction over this action pursuant to Art. 6 § 159 of the Mississippi Constitution of 1890 and Miss. Code § 9-5-81.
3. Venue lies in this Court pursuant to Miss. Code § 11-11-3.
4. The Parties recognize, and, by entering this Consent Decree, this Court finds that this Consent Decree has been negotiated by the Parties in good faith and that it is fair, reasonable, adequate, and in the public interest.
5. As set forth in the Declaratory Opinion, the parties stipulate and agree that the practice of surveying does not encompass work products which represent only a generalized location of a feature, object, or boundary upon which the public would not reasonably rely as the precise location of that feature, object, or boundary. The following items are not to be considered as activities within the definition of the practice of land surveying:
 1. The creation of general maps as illustrations, in electronic or print media, prepared by private entities, educational institutions, or governmental agencies as:

- a. guides to motorists, boaters, aviators, or pedestrians;
 - b. resources for the purposes of coordinating or administering public services, asset management and emergency response activities;
 - c. part of a publication in a gazetteer or atlas as an educational tool or reference publication;
 - d. part of the curriculum of any course of study;
 - e. guides to the geographic location of any event; or
 - f. part of conversational or illustrative documents, including advertising materials and users guides.
2. The transcription of previously georeferenced data into a GIS or LIS by manual or electronic means, and the maintenance thereof, provided the data are clearly not intended to indicate the authoritative location of property boundaries, the precise definition of the shape or contour of the earth, or the precise location of fixed works of humans.
 3. The transcription of public record data, without modification except for graphical purposes, into a GIS-based or LIS-based cadastre (showing the extent, value, or ownership of land for taxation and associated records) by manual or electronic means, and the maintenance of that cadastre, provided the data are clearly not intended to authoritatively represent property boundaries. This would include the production of tax maps and zoning maps.
 4. The preparation of any document by any government agency that does not depict real property boundaries. These documents includes: civilian and military versions

of quadrangle topographic maps, military maps, satellite imagery, and similar documentation.

5. The incorporation or use of documents or databases prepared by any governmental agency into a GIS or LIS, including census and demographic data, quadrangle topographic maps, and military maps.
6. Inventory maps and databases created by any organization, in either hard-copy or electronic form, of physical features, facilities, or infrastructure that are wholly contained within properties to which they have rights or for which they have management, service or administrative responsibility. The distribution of these maps and databases outside the organization must contain appropriate metadata describing, at a minimum, the accuracy, method of compilation, data source(s) and date(s), and disclaimers of use clearly indicating that the data are not intended to be used as a survey product.
7. Maps and databases depicting the distribution of natural resources or phenomena prepared by foresters, geologists, soil scientists, geophysicists, biologists, archaeologists, historians, or other persons qualified to document such data.
8. Maps and georeferenced databases depicting physical features and events prepared by any government agency where the access to that data is restricted by statute. These items include georeferenced data generated by law enforcement agencies involving crime statistics and criminal activities.
9. Work products containing the following written disclaimer in at least twelve point font:

“This work product represents only generalized locations of features, objects or boundaries and should not be relied upon as being legally authoritative for the precise location of any feature, object or boundary.”

6. The Parties agree that Vizaline has not held itself out as a licensed surveyor or held its products out as authoritative surveys or plats.
7. It is stipulated and agreed that operation in conformity with the Declaratory Opinion and terms in this Consent Decree is not the practice of surveying and does not violate Mississippi’s practice of surveying laws as currently enacted.
8. It is stipulated and agreed that Vizaline has ceased using, and will not use, the product name “Vizaplat.” Vizaline will not hold itself out as a licensed surveyor or hold its products out as authoritative surveys or plats.
9. Vizaline will include a written disclaimer, appearing in at least 10 point red font, on the cover of each report, and on the pages of such reports that include drawings or maps, provided to consumers in Mississippi, or concerning properties located in Mississippi, stating the following.

“This work product represents only generalized locations of features, objects or boundaries and should not be relied upon as being legally authoritative for the precise location of any feature, object or boundary.

Vizaline will also post this disclaimer on its website and any hardcopy advertising materials it provides to Mississippi consumers.
10. Vizaline will include in all reports to consumers in Mississippi that provide any notes and/or suggestions for corrections on legal descriptions, instructions to the consumer advising them to “Please seek a legal opinion and/or an opinion from a licensed surveyor.”
11. “Consumer” in this agreement shall include any purchaser of Vizaline’s work product.

12. It is stipulated and agreed that Vizaline currently operates in conformity with the Declaratory Opinion and the terms of this Consent Decree, is not in violation of Mississippi Code §§ 73-13-73 and 73-13-95 as currently enacted, and may legally continue to so operate.
13. The Board agrees that it may not enforce the practice of surveying laws, including Mississippi Code §§ 73-13-73 and 73-13-95 as currently enacted, against Vizaline while Vizaline is engaged solely in the activities defined as outside the practice of surveying in the Declaratory Opinion and this Consent Decree.
14. Because it is stipulated and agreed that Vizaline is not in violation of Mississippi Code §§ 73-13-73 and 73-13-95 as currently enacted and the Board will not enforce the practice of surveying laws, including Mississippi Code §§ 73-13-73 and 73-13-95 as currently enacted, against Vizaline, Vizaline agrees it will dismiss its First Amendment Complaint against the members of the Board subsequent to the entry of this Consent Agreement.
15. It is stipulated and agreed that the Parties will be responsible for their own attorney fees and costs in this litigation.
16. The Parties understand that, once entered, this Consent Decree will become a public record.

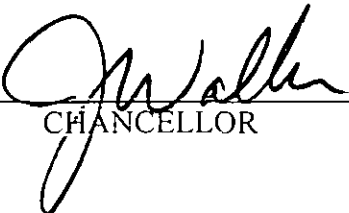
EFFECTIVE DATE

17. This Consent Decree shall be effective the date this Court enters it as recorded on this Court's docket.

ENFORCEMENT

18. This Consent Decree constitutes final relief entered by this Court. This Court shall retain jurisdiction over this matter for all purposes and may issue such orders as may be necessary or appropriate to enforce this Consent Decree.
19. The Parties may jointly agree to make changes, modifications, and amendments to this Consent Decree, which shall be effective if approved by this Court.
20. The Parties agree to defend the provisions of this Consent Decree. Each party shall notify the other of any legal challenge to this Consent Decree, whether such challenge arises in a court, an administrative proceeding, or otherwise.
21. The Parties shall require compliance with this Consent Decree by their respective officers, employees, agents, agencies, representatives, assigns, or successors.
22. The Parties and their respective officers, employees, agents, agencies, representatives, assigns, or successors shall not take any position contrary to the terms of this Consent Decree in any other litigation.
23. The Parties recognize that this agreement does not and cannot prevent the Mississippi Legislature from amending Mississippi Code §§ 73-13-73 and 73-13-95 or any other statute, or prevent the Mississippi Governor from signing such amending legislation into law. This agreement does not restrict the Parties' rights to support or oppose any such legislative amendments.

SO ORDERED on this the 11th day of December, 2020.



CHANCELLOR

READ, APPROVED AND AGREED:

/s/ J. Wade Sweat

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