

NOTICE OF ENTRY  
(SUPREME COURT RULE 74.03)

In The 13TH JUDICIAL CIRCUIT Court, Boone County, Missouri

DANIEL BROWN ET AL V CEDAR CREEK ROD AND GUN

CASE NO : 04CV164096

To: File

YOU ARE HEREBY NOTIFIED that the court duly entered the following:

<u>Filing Date</u>	<u>Description</u>
12-Nov-2008	Order ORDER AND JUDGMENT SIGNED THIS DATE. JB/VISITING JUDGE (mln)

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Clerk of Court

CC: File  
BRUCE DAVID RYDER  
DAVID A OLIVER  
LOUIS J LEONATTI  
ROBERT J BUCKLEY  
STEVEN JOSEPH GUNN  
TYLER RYAN BREED  
WILLIAM D POWELL

Date Printed : 13-Nov-2008

BEFORE THE CIRCUIT COURT OF BOONE COUNTY, MISSOURI

Daniel and Donny Brown,	)	
Plaintiffs,	)	
vs.	)	Case No. 04CV164096
Cedar Creek Rod and Gun Club,	)	
Defendant.	)	

ORDER and JUDGMENT

The Court takes up the Defendant’s Motion to Dissolve the Permanent Injunction. Also pending before this Court is Plaintiffs’ Application for a Show Cause Order and Motion for Contempt. Argument was presented to the Court on November 10, 2008. Being duly advised in the facts, the Court finds as follows:

1. On April 4, 2008, this Court entered its judgment permanently enjoining the Defendant as follows:

Defendant, its officers, members, agents and any others with personal knowledge of this order are hereby restrained and enjoined from discharging or permitting the discharge of any firearms on the premises of the Cedar Creek Rod and Gun Club (“Club”), except as set forth below [listing specific dates and times].

2. At the time of trial, the Court found that the Defendant’s conduct at issue was closer than one thousand (1000) yards from Plaintiffs’ home and that the version of § 537.294 RSMo then in effect did not immunize Defendant from liability for noise.

3. Defendant filed its notice of appeal on July 25, 2008, and did not seek a stay pending appeal.

4. Effective August 28, 2008, Section 537.294 RSMo was amended to expand the immunity offered to owners and authorized users of firearm ranges by deleting the one thousand (1000) yard threshold, granting what appears to be unlimited immunity from liability

under civil or criminal law for noise from such ranges.

5. Plaintiffs, in their application for a Show Cause Order, alleged that after August 28, 2008, the Defendant, its officers, members, agents and/or others with personal knowledge of the terms of the permanent injunction referenced above either discharged or permitted the discharge of firearms on the premises of the Cedar Creek Rod and Gun Club ("Club").
6. Defendant sought, from the Court of Appeals, an order dissolving the permanent injunction based upon the change in the law. The Court of Appeals did not deny the request but chose to take the matter with the case.
7. This Court first asked Defendant for a legal memorandum regarding the Application to Show Cause. Receiving none, the Court issued its Order to Show Cause, indicating that it wished to hear from the parties on the issue of jurisdiction.
8. Defendant instead, filed its Motion to Dissolve the Permanent Injunction with suggestions, primarily alleging that it no longer conducted any operations subject to the permanent injunction and even if it did, the amendments to § 537.294 RSMo (HB 2034 - 2008) gave them immunity. Defendant did not address the issue of a trial court's jurisdiction to dissolve an injunction while same was on appeal nor the fact that the Court of Appeals had already denied such relief.

The Court concludes as follows:


1. This Court currently lacks jurisdiction to amend, modify or dissolve its judgment granting a permanent injunction due to the notice of appeal filed by Defendant.
2. The recent amendments to § 537.294 RSMo would appear to preclude this Court from enforcing the existing permanent injunction after August 28, 2008.

3. The issue of the precise effects of said amendments are currently before the Court of Appeals.
4. An substantial evidentiary hearing would be required to resolve the issues of who is doing what and whether such conduct is subject to and/or violated the injunction. Judicial economy dictates that issues of jurisdiction be resolved first.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that Defendant's Motion to Dissolve the Permanent Injunction is denied;

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Plaintiffs' Motion for a Judgment of Contempt is dismissed, without prejudice towards reconsideration, pending a ruling from the Court of Appeals as to the effect of the recent amendments to § 537.294 RSMo in the instant cause. Any request for discovery is also stayed.

SO ORDERED this 12<sup>th</sup> day of November 2008.



A handwritten signature in black ink, appearing to read "J. E. Webb", is written over a horizontal line.