

IN THE SUPERIOR COURT OF GLYNN COUNTY
STATE OF GEORGIA

THE GLYNN ENVIRONMENTAL COALITION, INC.
and JANE FRASER,

Plaintiffs,

v.

SIA PROPCO II, LLC,
COUNTY OF GLYNN, GEORGIA, and
JOHN AND JANE DOES
Defendants.

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* Civil Action No. CE25-01130
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PLAINTIFFS' REPLY BRIEF IN SUPPORT OF THEIR
MOTION FOR POST-JUDGMENT CONTEMPT

The Glynn Environmental Coalition, Inc., and Jane Fraser (collectively, "Plaintiffs") file this Reply Brief in Support of their Motion for Post-Judgment Contempt and show the Court as follows:¹

Introduction

The County's Response to Plaintiffs' Motion for Post-Judgment Contempt demonstrates just how weak the County's arguments really are. The County first argues that bringing a contempt motion is procedurally improper, even when a litigant violates the final order from a prior lawsuit. As recent and binding Georgia appellate precedents unambiguously show that argument is simply incorrect.

Next, the County argues that its current acts are beyond the Court's contempt power, because the 2019 Order did not explicitly tell the County not to establish a roundabout and not to destroy 40% of the public's land, including numerous 200-year-old oak trees on that land. But the

¹ In this Reply, Plaintiffs incorporate and adopt the meanings given to the terms defined in their Brief in Support of their Motion for Post-Judgment Contempt.

2019 Order said that Twitty Park must remain a park and be preserved for use of the public as a park. The County's apparent position that this Court is powerless unless it preemptively listed out all the specific ways that the County *might* violate its order in the future is intuitively unappealing and legally wrong. When the Court ordered the County not to destroy Twitty Park, it did not render itself powerless in the future just because it did not list every way the County *might* try to destroy Twitty Park later.

The County further argues that cannibalizing Twitty Park to create a roundabout and destroying 40% of the public's land does not violate the Court's command to preserve the park. (*See, e.g.*, 2019 Order at p. 10 ("This property is not held by the County without encumbrance. Rather, it is property held by the public for which the County is merely the trustee.")) Once again, no citizen of Glynn County—nor any common speaker of English—would believe that these acts are consistent with preserving a park. The fact that the Court did not previously order Glynn County to tear up Frederica Road (which had been in place for decades) does not alter the plain meaning of its 2019 Order and its proscriptions on the County's conduct *going forward*.

Finally, Glynn County seemingly seeks to relitigate the public trust doctrine, an issue that was litigated in the *prior* action (which Glynn County lost). Setting aside that the public trust doctrine does apply here, Glynn County missed its window to litigate that issue half a decade ago.

These arguments do not carry the day. Glynn County's interpretation of the contempt power—and its spin on its plans for Twitty Park—make neither legal nor common sense. Rather, the simplest explanation is right: Glynn County wants to use Twitty Park's land for something other than a park, and it seemingly hoped enough time had passed since the 2019 Order that nobody would object. Because the passage of time does not excuse noncompliance with the Court's Order, the Court should ***GRANT*** the Post-Judgment Motion for Contempt.

Argument and Citation of Authority

I. Plaintiffs' Motion for Contempt is a proper procedural vehicle for this Court to interpret and clarify its 2019 Order.

Defendant Glynn County is wrong that Plaintiffs' efforts to enforce the Court's 2019 Order through its Motion for Contempt are somehow procedurally improper. (*See* Def.'s Resp. at pp. 5–6.) Nor are Plaintiffs attempting to use the present action as “a loophole for barred claims” as Glynn County suggests. (*See id.* at p. 6.)

The whole point of civil contempt is to provide an injured party with both a remedy and the means to coerce “compliance with the trial court's orders.” *Smith v. Smith*, 293 Ga. 563, 564 (2013) (omitting quotation). In fact, “[t]he judicial power to punish for contempt is inherent and enables the courts to perform their functions, including preserving order in judicial proceedings.” *In re Siemon*, 264 Ga. 641, 641 (1994). This is why Georgia law considers post-judgment contempt proceedings to be “ancillary to the primary action and . . . characterized as a motion and not a pleading.” *Carden v. Carden*, 266 Ga. App. 149, 150 (2004). So, despite the County's arguments to the contrary, (*see* Def.'s Resp. at p. 6), there is nothing abusive about Plaintiffs initiating a post-judgment contempt proceeding to enforce this Court's 2019 Order. In fact, it is the *only* procedural means that Plaintiffs can avail themselves to address the County's violations of this Court's commands. *See Cowart v. Ga. Power Co.*, 362 Ga. App. 574, 578–81 (2022) (“A review of the petition and its exhibits thus shows that the petition served to initiate a post-judgment contempt proceeding—rather than a wholly new action—over which the superior court retained inherent power for the purpose of enforcing its orders.” (cleaned up and omitting citation)).

II. Glynn County misunderstands the scope of this Court's contempt authority.

Civil contempt is not as straightforward as Glynn County suggests. True enough, the contempt is civil, and not criminal, where the primary purpose is to provide a remedy for an injured

party and to coerce compliance with an order. *Cowart*, 868 S.E.2d at 251–52 (“The distinction between criminal and civil contempt is that criminal contempt imposes unconditional punishment for prior acts of contumacy, whereas civil contempt imposes conditional punishment as a means of *coercing future compliance* with a prior court order.” (quoting *Cabiness v. Lambros*, 303 Ga. App. 253, 255 (2010))). And although the defenses to contempt include “that the order was not sufficiently definite and certain, was not violated, or that the violation was not wilful[,]” *G.I.R. Sys., Inc. v. Lance*, 228 Ga. App. 329, 331 (1997), superior courts, by statute, “have full power to mold its decrees so as to meet the exigencies of each case and shall have full power to enforce its decrees when rendered,” O.C.G.A. § 23-4-31.

Because of this power, a trial court’s contempt finding is afforded great deference. Georgia’s appellate courts will affirm a trial court’s determination “that a party either has or has not [willfully] disobeyed” its order “[i]f there is *any* evidence in the record to support” that finding. *Lance*, 228 Ga. App. at 331 (emphasis added). Ultimately, “whether a contempt has occurred” is for this Court to decide, “and its determination will be overturned only if there has been a gross abuse of discretion.” *See id.* This standard of deference given to trial courts makes clear that this Court has wide discretion to both determine whether Glynn County violated its 2019 Order and to craft a remedy for Plaintiffs. *See Sutherlin v. Sutherlin*, 301 Ga. 581, 582 (2017) (“The trial court in a contempt case has wide discretion to determine whether its orders have been violated.” (cleaned up and omitting quotation)).

Plaintiffs’ Motion for Contempt does not ask this Court to modify its 2019 Order. Plaintiffs, instead, ask this Court to interpret and clarify its earlier decision, something it is “always empowered” to do, *Sutherlin*, 301 Ga. at 582, and to “*exercise its discretion to craft a remedy for contempt*, including remedying harm caused to an innocent party by the contemptuous conduct[,]”

see Cowart, 362 Ga. App. at 583 (quoting *Smith*, 293 Ga. at 564). Even so, it is not clear that Georgia law would prohibit such modification request in this context—the Georgia Court of Appeals has only assumed without deciding “that a court may not modify a prior decree in a contempt order” outside of the divorce context. *Cowart*, 362 Ga. App. at 583 n.6. Glynn County, moreover, has not identified any Georgia appellate decisions that apply this proposition in a non-divorce matter like this one, and Plaintiffs cannot find any either. (*See generally* Def.’s Resp.)

It also goes without saying that this Court may enforce obligations that are necessarily implied from the terms of its 2019 Order. *See id.* at 583–85. And this makes sense given the inherent powers vested to courts to enforce the terms of its orders to ensure compliance. “The test to determine whether an order is clarified or interpreted, as opposed to modified, “is whether the clarification” or interpretation “is reasonable or whether it is so contrary to the apparent intention of the original order as to amount to a modification.” *See id.* at 583 (quoting *Kaufman v. Kaufman*, 246 Ga. 266, 268–69 (1980)). This means that trial courts have the authority “to see that there be compliance with the intent and spirit of its decrees, and no party should be permitted to take advantage of the letter of a decree to the detriments of the other party.” *Id.* at 583–84 (omitting alteration) (quoting *Kaufman*, 246 Ga. at 269). As a result, a trial court’s contempt authority extends to violations of both the express and the implied terms of its orders. *See id.* at 583–84.

Glynn County entirely ignores this precedent as though it does not exist. But the County’s attempts at ignoring it will not make it go away. For example, the County boldly claims that the 2019 Order cannot “be stretched to cover future conduct” because “contempt enforces only existing, clear commands.” (*See* Def.’s Resp. at p. 8.) This is simply incorrect under Georgia law—this Court may and should enter a contempt order that coerces Glynn County’s “future compliance” with the “intent and spirit” of its 2019 Order. *See Cowart*, 362 Ga. App. at 583–84,

586 (cleaned up and omitting quotations). Absent doing so, it would allow the County to do exactly what it seeks to do by encroaching on roughly 40% of Twitty Park’s space. Glynn County’s suggestion that Plaintiffs have no remedy for this conduct is not only contrary to the express terms of this Court’s previous order, but it renders any mechanism to address this conduct as meaningless. If the judiciary is to have any power at all, then the County’s proposition must be rejected.

Glynn County also ignores that this Court, in addition to explicit obligations, may enforce obligations that are necessarily implied from the terms of its 2019 Order. (*See, e.g.*, Def.’s Resp. at p. 8.) As explained above, this Court has the power to see that Glynn County complies with both the 2019 Order’s plain terms as well as those “necessarily implied” by it. *See Cowart*, 362 Ga. App. at 584–85 (finding the superior court’s contempt authority was “necessarily implied” and collecting cases finding the same in support). Glynn County’s argument that this Court could only award Plaintiffs relief if it “were attempting to transfer or alienate” Twitty Park after “such a transfer was found to be invalid,” is, in a word, wrong. (*See* Def.’s Resp. at p. 15.) The case law above demonstrates that the Court’s broad contempt authority is not so limited. *See Cowart*, 362 Ga. App. at 583–84, 586. Accordingly, this Court may craft a remedy that addresses Glynn County’s violations of the 2019 Order’s express terms and the intent and spirit of that ruling. *See id.* Anything less is contrary to well-established Georgia law.

III. Glynn County has violated both the express and implied terms of the 2019 Order.

Consider first the relief Plaintiffs requested in their motion for summary judgment that led to this Court’s 2019 Order. As this Court summarized, Plaintiffs asked for specific declaratory relief with respect to Claim One of their Verified Complaint:

Plaintiffs seek a declaration that (i) the public trust doctrine applies to Twitty Park; (ii) the County’s actions resulting in the transfer of Twitty Park to SIC were ultra

vires; and (3) the County’s conveyance of Twitty Park to SIC, as well as all subsequent transfers of Twitty Park, are void. Plaintiffs also ask the Court to issue *an order prohibiting the County from alienating or abandoning use of Twitty Park as a public park absent special legislation from the Georgia General Assembly and approval by referendum of the citizens of Glynn County.*

(See 2019 Order at p. 2 (emphasis added).)

This Court clearly and unequivocally granted Plaintiffs’ request. It held that “[w]hen the County took title to Twitty Park in 1924, it did so for public use as a park, and it held the property in trust for that purpose.” (*Id.* at p. 5; *see also id.* at p. 10 (“This property is not held by the County without encumbrance. Rather, it is property held by the public for which the County is merely trustee.”).) It further declared the County’s transfer of Twitty Park to SIC was *ultra vires* and therefore void. (*See id.* at 11 (“[T]he Court concludes that the County’s attempt” to transfer Twitty Park “was *ultra vires* and void *ab initio*.”).) And this Court also held that the County does not have the authority “to alienate park property it accepted subject to an express directive that it be used as a park or revert to the grantor.” (*Id.* at p. 10.) Accordingly, this Court concluded: “Where the common law principles enunciated by the *Tuten* Court . . . prevent alienation of lands dedicated to public use, . . . Twitty Park comprised just such property of which the County could not lawfully dispose without reversion to the grantor or an affirmative action by the General Assembly.” (*Id.*)

Glynn County therefore has willfully violated the 2019 Order because it apparently believes its priorities justify such a violation. *Cowart*, 362 Ga. App. at 583–84. The County has done so for the reasons Plaintiffs explained in their Brief in Support of their Motion for Post-Judgment Contempt, including by:

- Planning a roundabout and other roadworks project (i.e., the Roundabout Project) that would impermissibly encroach on nearly half of Twitty Park’s total acreage since at least October 2021. (*See Pls.’ Br.* at pp. 2–3.)
- Unanimously approving funding for the engineering and design of the Roundabout Project in June 2022 and continuing its efforts since then. (*See id.* at p. 3.)

- Negotiating the terms of the Utility Relocation Agreement with Georgia Power in January 2025 to remove, relocate, or make certain adjustments to Georgia Power's existing facilities to allow Glynn County to complete the Roundabout Project. (*See id.*)
- Approving the Utility Relocation Agreement in July 2025, which authorized Georgia Power to encroach on over 40% of the Park's space by removing approximately 0.550 acre from North Twitty Park's 0.89 acre and 0.255 acre of the 1.1 acres that make up South Twitty Park. (*See id.* at pp. 3–4.)
- In addition to the Utility Relocation Agreement, planning further destruction of Twitty Park through its construction of the roundabout at the intersection of Sea Island Road and Frederica Road. (*See id.* at p. 4.)

Nor does the County's alleged "good faith" attempt "to serve public safety" absolve it of its contempt. As explained above, the 2019 Order impliedly, if not explicitly, declared that Glynn County could not dispose of Twitty Park without reversion to the grantor or an act of the legislature. It strains credulity to believe that Glynn County thought otherwise.

Moreover, the County's citations do not support its argument that "[g]ood-faith interpretation defeats contempt." (*See* Def.'s Resp. at p. 7 (citing *Bernard v. Bernard*, 347 Ga. App. 429, 431 (2018)).) The *Bernard* decision makes no mention of "good faith" at the pincite the County provides. Elsewhere, however, the *Bernard* court does discuss the contemnor's good faith. *See Bernard*, 347 Ga. App. at 434–35. And in this discussion, the court explains how a contemnor's "good faith" exhaustion of his resources factors into the contempt analysis when an "inability to pay" defense is raised by a party who failed to pay amounts required by court order. *See id.* Still, it is not clear that courts should consider a party's good faith beliefs outside of this defense. What is more, Glynn County does not provide any other support to suggest otherwise. It also is somewhat incredible that the County can take the position that taking away over 40% of the Park's space, including numerous 200-year-old oak trees that are enjoyed by the public, to allow for car traffic is somehow a good faith discharge of its obligations to hold Twitty Park in trust for the use

and benefit of the citizens of Glynn County as a park. Imagine a scenario where the council members of New York City attempted to put a road through the heart of Central Park. Obviously, that would be a desecration of a sacrosanct public park that is enjoyed by many. But that is exactly what the County seeks to do here and its disregard for the obligations it owes to its own citizens is nothing short of outrageous.

Glynn County also argues that the Utility Relocation Agreement involves a “minor, temporary adjustment within” its existing rights. (*See* Def.’s Resp. at p. 9.) The County claims that this is in part because this Court “squarely held” that “bisecting the entire park with a major roadway does not offend the Cain Deed or any dedication principles[.]” (*See id.*) Not so. As for the bisecting of Twitty Park, this Court held that it “did not violate the conditions of the Cain Deed” because that deed “did not require that the right-of-way to Sea Island in place in 1924 be maintained unaltered in perpetuity. Rather, it required only that the property be used as a right-of-way to Sea Island and a public park.” (2019 Order at p. 12.) As for the Frederica Road expansion, this Court found that it did not violate the Cain Deed because “[t]here is nothing inherently inconsistent with the use of the property as a public park and right-of-way to Sea Island with the concurrent use of a *small portion* of the property as a public right-of-way.” (*Id.* (emphasis added).)

This does not imply, as the County argues, that the 2019 Order not only permits its “planned roundabout and utility relocations” but “it effectively validates them as consistent with the Cain Deed and free from restrictions Plaintiffs invent.” (*See* Def.’s Resp. at p. 9.) Instead, necessarily implied in this Court’s ruling is this: the portion of Twitty Park used as a public right-of-way could, at some point, become too large to comply with the Cain Deed. As explained in Plaintiffs’ initial Brief, the Utility Relocation Agreement demonstrates that Glynn County intends to do just that—

that is, use an impermissibly large portion of Twitty Park (over 40% of what is left of it) as a public right-of-way. (*See* Pls.’ Brief at pp. 7–8.) When compared to the Frederica Road widening (which widened the road from 74.68 feet to 100 feet) at issue in the 2019 Order, this point becomes even more obvious. (*See* Pls.’ Statement of Undisputed Facts in Support of Mot. for Summary Judgment at ¶ 7.) Considering this, the Court should find that Glynn County has violated its 2019 Order by executing the Utility Relocation Agreement and that it intends to continue doing so through its completion of the Roundabout Project.

IV. Plaintiffs request a reasonable remedy for Glynn County’s contempt.

Glynn County’s mistaken understanding of this Court’s contempt authority also bleeds into its characterization of the remedy Plaintiffs now request. Somehow, Glynn County reads Plaintiffs’ initial brief to include a request for “a blanket halt to” the Roundabout Project. (*See* Def.’s Resp. at p. 9.) The County further suggests that Plaintiffs ask this Court to impermissibly “rewrite” its 2019 Order to include relief explicitly rejected. (*See id.*) Again, Glynn County has it wrong.

As explained in Plaintiffs’ Brief in Support of their Motion for Contempt, Plaintiffs seek declaratory relief from this Court. (Pls.’ Brief at pp. 9–10.) The relief Plaintiffs request mirrors their requests for declaratory relief that this Court granted in its 2019 Order. (*See* 2019 Order at p. 2.) While the County’s future roundabout activity was not explicitly identified in the 2019 Order as an act that would violate Glynn County’s duties as trustee of Twitty Park, Plaintiffs contempt motion essentially asks this Court to interpret its earlier Order and to clarify that such activity would do so. This would not be “so contrary to the apparent intention of” the 2019 Order “as to amount to a modification.” *See Kaufman*, 246 Ga. 268–69. It necessarily follows, then, that Plaintiffs’ latest request for declaratory relief is reasonable, *See id.* and this Court has the power to grant Plaintiffs this relief. *See id.* (“The trial court has the power to see that there be compliance

with the intent and spirit of its decrees and no party should be permitted to take advantage of the letter of a decree to the detriment of the other party.”); *Cowart*, 362 Ga. App. at 583–84.

Nor is Plaintiffs’ request that this Court conditionally punish Glynn County for its years-long contemptuous conduct unreasonable. (*See* Pls.’ Brief at pp. 9–10.) This Court may condition Glynn County’s ability to continue its Roundabout Project on the County’s compliance with the terms of the 2019 Order.

The *Cowart* decision helps explain why. The *Cowart* Court considered a dispute between a landowner, Cowart, and Georgia Power Company, regarding Georgia Power’s electrical transmission line easement on Cowart’s property. 362 Ga. App. at 574. After the trial court in *Cowart* initially granted Georgia Power relief in 2002, the trial court later found that the landowner had violated its 2002 order, required the parties to enter an agreement attached to its contempt order, and enjoined Cowart from doing certain things on his property. *Id.* at 574–78, 583–84. The trial court’s 2005 contempt order also included this conditional language:

In the event [Cowart] violates the terms of this Order, penalties shall be enforced against [Cowart,] including the payment of any attorney's fees incurred by [Georgia Power,] as well as a fine up to \$10,000.00 per day for any violation. In the event that there is a second violation of the terms of this Order granting Injunctive Relief, the Court shall retain the right to [im]pose additional fines and penalties and if less substantial evidence is presented to justify the continued violation of the Court's order, *the Court will consider terminating all privileges of [Cowart] to utilize the right of way of [Georgia Power].*

Id. at 584. Despite this, Cowart continued to violate the trial court’s 2005 contempt order. *See id.* So, Georgia Power brought two additional contempt petitions against Cowart, all of which the trial court granted. *See id.* at 574–78. At issue before the *Cowart* court was Cowart’s contention that the trial court, in its latest contempt order from 2018, “impermissibly modified the terms of the 2005 Order by requiring him to erect barriers on his property.” *Id.* at 583.

The *Cowart* court disagreed. Relying on the conditional language above, the court found that the trial court’s authority “to require the parties to take actions necessary to terminate Cowart’s privileges to use the right of way following multiple violations of the 2005 Order is necessarily implied in that order.” *Id.* at 584. This was true even though the trial court did not explicitly identify “the construction of a barrier . . . as a means to” terminate Cowart’s easement access. *Id.* at 585. Since the trial court only conditioned Cowart’s continued easement access on the construction of a barrier, the appellate court in *Cowart* held that the trial court “did not modify or rewrite the 2005 Order, but rather properly allowed Cowart to purge himself by complying with its terms.” *Id.* (quotation omitted). As a result, the court found that the superior court did not abuse its discretion by “crafting this relief to remedy the harm caused to Georgia Power (and, potentially, to the greater community) by Cowart’s years-long ongoing contemptuous conduct.” *Id.*

So too here. Given Glynn County’s years-long, ongoing contemptuous conduct, it would be reasonable for this Court to give the County the option of revising its Roundabout Project to purge its contemptuous conduct. *See id.* If Glynn County does not want to do so, then it has another option under Plaintiffs’ proposed approach—it can abandon the project altogether. (*See* Pls.’ Brief at p. 10.) The County’s historical conduct also demonstrates why this Court should exercise its discretion, as the trial court in *Cowart* did, to explicitly state the progressive consequences the County could face should it continue to violate the Court’s rulings. *See Cowart*, 362 Ga. App. at 584. Such a remedy, considering Glynn County’s conduct since the 2019 Order, is an appropriate way for this Court to coerce the County’s future compliance with its prior orders. *See id.* at 587.

V. Glynn County has waived its right to challenge Plaintiffs’ reliance on the “public trust doctrine.”

The County makes much of Plaintiffs’ references to the “public trust doctrine.” (*See generally* Def.’s Resp. at pp. 10–15.) And the County spends about two pages of its response

recounting the case law on this doctrine that this Court relied on in its 2019 Order. (*Compare id.* at pp. 11–14, *with* 2019 Order at pp. 3–11.) To the extent Glynn County is arguing that this Court incorrectly applied the public trust doctrine or is otherwise challenging the Court’s conclusion that the doctrine applies to protect Twitty Park, the County has long since waived the opportunity to do so. *See, e.g., Hamner v. Turpen*, 319 Ga. App. 619, 620–21 (2013) (finding defense of improper venue waived when defendant did not raise argument until the hearing on his contempt action). The County is also likely estopped from making this argument under the collateral estoppel doctrine. *See, e.g., Kent v. Kent*, 265 Ga. 211, 211–12 (1995) (“[C]ollateral estoppel applies where an issue of fact or law is actually litigated and determined by a valid judgment, and the determination is essential to the judgment.”).

In any event, Plaintiffs agree with Glynn County that the authority cited in the 2019 Order establishes this principle: “Municipalities may not alienate or lease dedicated public lands to private parties without statutory or legislative authority.” (*See* Def.’s Resp. at p. 14.) Exactly. And Glynn County violated this rule, at a minimum, when it executed the Utility Relocation Agreement with Georgia Power. (*See* Pls.’ Brief at pp. 7–8.) The portion of Twitty Park that this Agreement implicates is far larger than the “small portion of the property,” that is, a widening of only about 25 feet, at issue in the Court’s earlier ruling. (*See* 2019 Order at p. 12.) Moreover, the County’s agreement with Georgia Power is only one part of the larger Roundabout Project that further threatens the public’s property. (*See* Pls.’ Brief at pp. 7–8.) Under any fair interpretation of Glynn County’s conduct, then, this Court should grant Plaintiffs Motion for Contempt and craft relief that remedies the harm Plaintiffs continue to suffer.

Conclusion

For the reasons above, Glynn County's interpretation of the contempt power—and its spin on its plans for Twitty Park—is nonsensical. Instead, Glynn County wants to use Twitty Park's land for something other than a park, and it seemingly hoped enough time had passed since the 2019 Order that nobody would object. Because the passage of time does not excuse noncompliance with the Court's 2019 Order, the Court should **GRANT** the Post-Judgment Motion for Contempt.

Respectfully submitted this 24th day of October, 2025.

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CERTIFICATE OF SERVICE

This is to certify that I have on this day served all the parties in this case in accordance with the Odyssey e-filing system which will automatically serve all parties and counsel of record with an electronic record.

Respectfully submitted this 24th day of October, 2025.

BOUHAN FALLIGANT, LLP

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