

**District Court, Dodge County, Nebraska**

**Ben Hoffman,**

**Plaintiff,**

**v.**

**Arps Red-E-Mix, Inc., a Nebraska  
Corporation,**

**Defendant.**

**Case No. CI 15-542**

**Plaintiff's Motion for  
Summary Judgment**

**(April 2018)**

1. Pursuant to *Neb Rev Stat* § 25-1330, and 1332, the Court is asked to determine, as a matter of law, that Defendant's alleged prescriptive easement and affirmative defenses of Plaintiff knowingly coming to the nuisance, equitable estoppel, doctrines of laches and unclean hands are without merit. Thus, judgment should be granted in favor of Plaintiff.

2. The evidence establishes all legal elements of Plaintiff's claims against Defendant but do not support Defendant's alleged counterclaim or affirmative defenses. Because there are issues of material fact as to Plaintiff's claims and no issues of material fact regarding Defendant's counterclaim and affirmative defenses, Plaintiff is entitled to judgment as a matter of law.

**Request for Relief**

3. Plaintiff requests this Court sustain this Motion for Summary Judgment and rule in Plaintiff's favor on Defendant's counterclaim and affirmative defenses.

**Notice of Hearing**

4. Notice is hereby given that the above Motion for Summary Judgment will be called for hearing before the Honorable Geoffrey C. Hall on May 4, 2018 at 11:00 a.m. at Dodge County District Court, Fremont, Nebraska.

**Evidence to be Offered**

5. Plaintiff expects to offer the following evidence at the hearing:

- 5.1. Plaintiff's Amended Complaint;
- 5.2. Defendant's Amended Answer to Amended Complaint, Jury Demand, and Counterclaim;
- 5.3. Defendant's Responses to Requests for Admissions; and,
- 5.4. Plaintiff Ben Hoffman's 3/16/17 deposition transcript.

April 27, 2018.

Ben Hoffman, Plaintiff,

By: /s/ S. Ryan Greenwood  
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*Plaintiff's Lawyers*

### **Certificate of Service**

On April 27, 2018, a true copy of the foregoing was delivered by email to:

Robert S. Keith, #21023  
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/s/ S. Ryan Greenwood  
S. Ryan Greenwood, #25943

# Certificate of Service

I hereby certify that on Monday, April 30, 2018 I provided a true and correct copy of the Motion-Summary Judgment to the following:

Arps Red-E-Mix, Inc. represented by Keith,Robert,S. (Bar Number: 21023) service method:  
Electronic Service to rkeith@ekoklaw.com

Hoffman,Ben, represented by Domina,David,A (Bar Number: 11043) service method:  
Electronic Service to ddomina@dominalaw.com

Signature: /s/ Stephen Ryan Greenwood (Bar Number: 25943)