

NICHOLAS J. DAAVETILA
ATTORNEY AT LAW, PLC

NICHOLAS J. DAAVETILA
ADMITTED TO PRACTICE LAW
IN MICHIGAN AND WISCONSIN

417 SHELDEN AVENUE, SUITE 1
HOUGHTON, MICHIGAN 49931
TELEPHONE: (906) 482-6310
FAX: (906) 482-3841

September 23, 2010

CERTIFIED MAIL
RETURN RECEIPT REQUESTED
RESTRICTED DELIVERY

Andrew Moyle
Resident Agent
VVQ Land Holdings, LLC
46702 Highway M-26
Houghton, MI 49931

RE: Charter Township of Portage v VVQ Land Holdings, LLC, et al
Court File No. 10-14647-CH

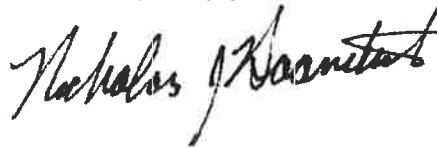
Dear Mr. Moyle:

I represent the Charter Township of Portage in the above-entitled action. I have enclosed a Summons and Complaint and Request for Injunctive Relief for your review.

The Summons indicates that you have 28 days within which to respond to the Complaint. If no answer is filed with the Court within 28 days, I will be requesting a default and default judgment from the Circuit Court.

Thank you for your prompt attention to this matter.

Very truly yours,



Nicholas J. Daavettila

NJD/lap
Enclosure

STATE OF MICHIGAN JUDICIAL DISTRICT JUDICIAL CIRCUIT COUNTY PROBATE	SUMMONS AND COMPLAINT	CASE NO. 10-14647-CH
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Court address 401 E. Houghton Avenue, Houghton, Michigan 49931	Court telephone no. (906) 482-5420
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Plaintiff's name(s), address(es), and telephone no(s).
 Charter Township of Portage
 47240 Green Acres Road
 Houghton, MI 49931
 (906) 482-4310

Plaintiff's attorney, bar no., address, and telephone no.
 Nicholas J. Daavettila (P64556)
 417 Shelden Avenue, Suite 1
 Houghton, MI 49931
 (906) 482-6310

Defendant's name(s), address(es), and telephone no(s).
 V **VVQ Land Holdings, LLC**
 Resident Agent: Andrew Moyle
 46702 Highway M-26
 Houghton, MI 49931

Thomas J. Moyle, Jr., Incorporated d/b/a
 Valley View Quarry
 Resident Agent: Kimberly R. Moyle
 46702 Highway M-26
 Houghton, MI 49931

SUMMONS NOTICE TO THE DEFENDANT: In the name of the people of the State of Michigan you are notified:

1. You are being sued.
2. **YOU HAVE 21 DAYS** after receiving this summons to **file a written answer with the court** and serve a copy on the other party **or take other lawful action with the court** (28 days if you were served by mail or you were served outside this state). (MCR 2.111(C))
3. If you do not answer or take other action within the time allowed, judgment may be entered against you for the relief demanded in the complaint.

Issued 9-17-10	This summons expires 12-17-10	Court clerk Mary Schoos
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*This summons is invalid unless served on or before its expiration date.
 This document must be sealed by the seal of the court.

COMPLAINT *Instruction: The following is information that is required to be in the caption of every complaint and is to be completed by the plaintiff. Actual allegations and the claim for relief must be stated on additional complaint pages and attached to this form.*

Family Division Cases

There is no other pending or resolved action within the jurisdiction of the family division of circuit court involving the family or family members of the parties.

An action within the jurisdiction of the family division of the circuit court involving the family or family members of the parties has been previously filed in _____ Court.

The action remains is no longer pending. The docket number and the judge assigned to the action are:

Docket no.	Judge	Bar no.
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General Civil Cases

There is no other pending or resolved civil action arising out of the same transaction or occurrence as alleged in the complaint.

A civil action between these parties or other parties arising out of the transaction or occurrence alleged in the complaint has been previously filed in _____ Court.

The action remains is no longer pending. The docket number and the judge assigned to the action are:

Docket no.	Judge	Bar no.
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VENUE

Plaintiff(s) residence (include city, township, or village) Houghton, Michigan	Defendant(s) residence (include city, township, or village) Houghton, Michigan
Place where action arose or business conducted Portage Township, Houghton County, Michigan	

09/14/2010
 Date


 Signature of attorney/plaintiff

If you require special accommodations to use the court because of a disability or if you require a foreign language interpreter to help you fully participate in court proceedings, please contact the court immediately to make arrangements.

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF HOUGHTON

THE CHARTER TOWNSHIP OF PORTAGE
a Michigan Municipal Corporation,

Plaintiff,

File No.

vs.

VVQ LAND HOLDINGS, LLC,
a Michigan limited liability company, and
THOMAS J. MOYLE, JR., INCORPORATED,
d/b/a VALLEY VIEW QUARRY,
a Michigan Corporation,

Defendant.

Nicholas J. Daavettila (P64556)
Attorney at Law, PLC
Attorney for Plaintiff
417 Shelden Avenue
Houghton, MI 49931
(906) 482-6310

COMPLAINT AND REQUEST FOR INJUNCTIVE RELIEF

There is no other pending or resolved civil action arising out of the same transaction or occurrence as alleged in the complaint.

NOW COMES THE PLAINTIFF, THE CHARTER TOWNSHIP OF PORTAGE, by and through its attorney, Nicholas J. Daavettila, of the law firm of Nicholas J. Daavettila, Attorney at Law, PLC, in complaint against the Defendants, VVQ LAND HOLDINGS, LLC, and THOMAS J. MOYLE, JR., INCORPORATED, d/b/a VALLEY VIEW QUARRY, states as follows:

1. The Plaintiff, THE CHARTER TOWNSHIP OF PORTAGE, is a Michigan municipal corporation geographically located in the County of Houghton, State of Michigan, with its principal offices located at 47240 Green Acres Road, Houghton, Michigan 49931.

2. The Defendant, VVQ LAND HOLDINGS, LLC, is a Michigan limited liability company with its principal offices located at 46702 Highway M-26, Houghton, Michigan 49931, in the County of Houghton, State of Michigan.

3. The Defendant, THOMAS J. MOYLE, JR., INCORPORATED, d/b/a VALLEY VIEW QUARRY, is a Michigan corporation with its principal offices located at 46702 Highway M-26, Houghton, Michigan 49931, in the County of Houghton, State of Michigan.

4. That the cause of action has arisen in the Charter Township of Portage, located within the County of Houghton, State of Michigan.

5. That the relief sought by Plaintiff is equitable in nature and thus, venue and jurisdiction are proper in the Circuit Court for the County of Houghton, State of Michigan.

6. The Plaintiff, THE CHARTER TOWNSHIP OF PORTAGE, has enacted and enforces a comprehensive land use plan known as the Portage Township Zoning Ordinance.

7. The Portage Township Zoning Ordinance prescribes specific zoning districts within the geographical boundaries of Portage Township and expressly provides for allowable uses within particular zoning classifications.

8. Subsequent to the enactment of the Portage Township Zoning Ordinance, the Defendant, VVQ LAND HOLDINGS, LLC, purchased real property from

Thomas J. Moyle and Denise B. Moyle, husband and wife. A copy of the relevant Deed is attached hereto as "Exhibit 1."

9. That the property purchased by VVQ LAND HOLDINGS, LLC, identified above, was situated in a zoning district classified as "Rural Residential."

10. That Section 3.4.2.b. lists the permitted uses of land for property designated as Rural Residential, including:

- "(1) Dwelling, single and multi family dwellings.
- (2) Mobile home.
- (3) Agriculture and forestry.
- (4) Public or private community facilities such as schools, churches, cemeteries, libraries, parks, recreational facilities, hospitals, institutions, etc. (Also see Section 9 of this Ordinance).
- (5) Signs as permitted in Section 5 of this Ordinance.
- (6) Neighborhood services."

A copy of the pertinent portion of the Portage Township Zoning Ordinance is attached hereto as "Exhibit 2."

11. That the Portage Township Zoning Ordinance also provides for accessory uses and special uses within properties zoned as Rural Residential.

12. The Defendant, THOMAS J. MOYLE, JR., INCORPORATED, d/b/a VALLEY VIEW QUARRY, conducts a quarry operation involving the blasting and crushing of bedrock and the transportation of quarry materials to and from the real property at issue.

13. The Portage Township Zoning Ordinance has no permitted, accessory or special use permitted for the land usage in the Defendant, THOMAS J. MOYLE, JR., INCORPORATED, d/b/a VALLEY VIEW QUARRY, is engaged.

14. The Defendant, THOMAS J. MOYLE, JR., INCORPORATED, d/b/a VALLEY VIEW QUARRY'S operation of a quarry and mineral extraction business

is in violation of the Portage Township Zoning Ordinance as it is a use of land not permitted in the zoning district in which the Defendants' real property is located.

15. Under MCL 125.3407 the use of land or a dwelling, building, or structure, including a tent or recreational vehicle, used, erected, altered, raised, or converted in violation of a zoning ordinance or regulation adopted under this act is a nuisance per se.

16. On August 24th, 2010, the Board of the Charter Township of Portage voted to declare the quarry operation and mineral extraction business in violation of the Portage Township Zoning Ordinance and as a nuisance per se.

17. On August 25th, 2010, counsel for Portage Township issued correspondence to Kimberly R. Moyle, resident agent of the Defendant, THOMAS J. MOYLE, JR., INCORPORATED, d/b/a VALLEY VIEW QUARRY, advising of the Township Board's action and demanded that operation cease within ten days of the correspondence. A copy of this letter is attached hereto as "Exhibit 3."

18. On September 3rd, 2010, Andy Moyle, President of Moyle Real Estate and Development issued a response to Portage Township's violation notice indicating that quarry operations would not cease and any attempt to shut down the operation of Valley View Quarry would be vigorously opposed.

19. To date, the Defendants continue to operate Valley View Quarry in violation of the zoning ordinance.

20. Under Section 11.5 of the Portage Township Zoning Ordinance, the Township attorney or any interested party may institute injunction, abatement or other proceedings to prevent, enjoin, or abate any unlawful land usage. A copy of this Ordinance Section is attached hereto as "Exhibit 4."

21. The Defendants' activities constitute a nuisance per se as the usage of the land is not permitted by Portage Township Zoning Ordinance.

22. The Defendants' activities have damaged and continue to damage the residents of the Charter Township of Portage through the unsightly nature of Defendants' operations, the loud noises associated with blasting and crushing of bedrock, the diminution of property values suffered by surrounding landowners, loss of enjoyment of property by surrounding landowners, and the potential dangers and general disruptions caused by an essentially industrial activity occurring in a rural residential neighborhood.

23. Under MCL 125.3407, a Court shall order a nuisance abated and the owner or agent in charge of the land is liable for maintaining a nuisance per se.

WHEREFORE, the Plaintiff respectfully requests that the Court grant judgment in its favor awarding the Plaintiff preliminary, final, and permanent injunctive relief ordering the Defendants to cease and desist in their violative activity and to abate the nuisance and any and all further equitable or legal relief to which the Plaintiff may be entitled, including costs, interest, and attorney fees.

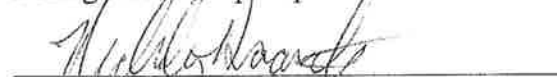
Dated September 17, 2010

Dated: September 17, 2010

RESPECTFULLY SUBMITTED,



BRUCE PETERSEN,
Portage Township Supervisor



NICHOLAS J. DAAVETTILA (P64556)

Attorney at Law, PLC
Attorney for Plaintiff
417 Sheldon Avenue
Houghton, MI 49931
(906) 482-6310



* 2 0 0 9 R - 0 7 3 7 0 2 *
MARY SCHOOS

HOUGHTON COUNTY REGISTER OF DEEDS

12/16/2009 02:55:04PM

FEE: \$17.00

PAGES: 2 RCPT#: 29993

2009R-07370 CORRECTION QUIT CLAIM DEED

QUITCLAIM DEED

The Grantors, Thomas J Moyle and Denise B Moyle, husband and wife as tenants by the entirety, whose address is 46702 HWY M26, Po Box 414 Houghton MI, 49931, quitclaims to the Grantee, VVQ Land Holdings LLC, a Michigan Limited Liability Company, whose address is 46702 HWY M26, PO Box 414, Houghton, MI 49931, the premises in Portage Township, Houghton County, Michigan, described as:

Parcel 1: The South Half of the Southeast Quarter (S1/2 of SE1/4) of Section 10, Township 54 North, Range 34 West, including all sand and gravel rights;

Parcel 2: The Northeast Quarter (NE1/4) of Section 15, Township 54 North, Range 34 West, including all sand and gravel rights;

Parcel 3: The South Half of The Northwest Quarter (S1/2 of NW1/4) of Section 15, Township 54 North, Range 34 West, including all sand and gravel rights;

Parcel 4: The Southwest Quarter (SW1/4) of Section 15, Township 54 North, Range 34 West, including all sand and gravel rights;

Parcel 5: The Northwest Quarter of the Southeast Quarter (NW ¼ of SE ¼) of Section 15, Township 54 North, Range 34 West, including all sand and gravel rights;

Parcel 6: That part of the Northeast Quarter of the Southeast Quarter (NE 1/4 of SE 1/4) of Section 15, Township 54 North, Range 34 West, described as follows: Beginning at an iron pin set in concrete on the East-West centerline of Section 15, 316.17 feet Westerly from the East Quarter post of said Section, said point being the Northwest corner of the Plat of the Village of Superior; thence South 89° 51' West along the East-West centerline 1082.32 feet to the Northwest corner of the NE 1/4 of SE 1/4 of said Section; thence South 01° 51' West along the West boundary of said NE 1/4 of SE 1/4, 876.08 feet to an iron pin set in concrete marking the Southwest corner of said Plat; thence North 51° 39' East 145.82 feet (also described as North 51° 42' East 1420.68 feet) along the West boundary of said Plat to the iron pin set in concrete being the Point of Beginning, including all sand and gravel rights;

Parcel 7: That part of the Southwest Quarter of the Southeast Quarter (SW1/4 of SE1/4) of Section 15, Township 54 North, Range 34 West, described as follows: Beginning at an iron pin at the Northwest corner of the SW1/4 of the SE1/4 of said Section 15; thence Easterly along the North line of the SW1/4 of the SE1/4 of said Section 729.49 feet to an iron pin; thence S 51° 39' W 913.52 feet to an iron pin on the West line of said SW1/4 of the SE1/4; thence Northerly along the said West line 563.98 feet to the Point of Beginning, including all sand and gravel rights;

Parcel 8: Lot 9, Block B, Plat of Superior City, according to the recorded plat thereof in Plat Cabinet 1, Folio No. 80, Houghton County Records, including all sand and gravel rights;

commonly known as Valley View Quarry at 46425 Green Acres Rd, for the sum of less than \$100.00 (One Hundred Dollars) the adequacy and receipt of which is hereby acknowledged, subject to easements and building and use restrictions of record, further subject to 1st Mortgage held by River Valley Bank, and subject to the lien of taxes not yet due and payable.

EXHIBIT

tabbics

1

Parcels 3 through 7 are subject to part 511 of the Commercial Forest Part of the Natural Resources and Environmental Protection Act.


This Transfer is exempt from State Real Estate Transfer Tax pursuant to MCL 207.526(a), MCL 207.526(p)(ii) and MSA 7.456(5)(a)

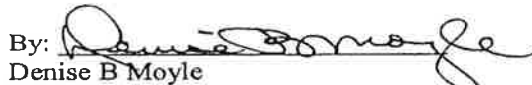
The Grantor grants to the Grantee the right to make any number of division(s) allowed under section 108 of the land division act, Act No. 288 of the Public Acts of 1967, MCL 560.108.

This property may be located within the vicinity of farm land or a farm operation. Generally accepted agricultural and management practices which may generate noise, dust, odors, and other associated conditions may be used and are protected by the Michigan right to farm act.

Dated: 12-15-09

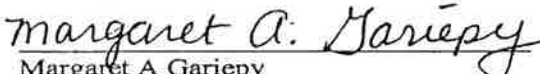
GRANTOR(S)

By: 
Thomas J Moyle

By: 
Denise B Moyle

STATE OF MICHIGAN)
HOUGHTON COUNTY)

The foregoing instrument was acknowledged before me this Dec. of 15th, 2009 by Thomas J Moyle and Denise B Moyle, husband and wife.


Margaret A Gariepy
Notary public, State of Michigan, County of Houghton
My commission expires 6-1-2011



Drafted by and when recorded return to:
Andrew J Moyle (P71859)
PO Box 414
46702 HWY M26
Houghton, MI 49931



* 2 0 0 9 R - 0 7 5 5 3 2 *
 MARY SCHOOS
 HOUGHTON COUNTY REGISTER OF DEEDS
 12/28/2009 03:20:34PM
 FEE: \$17.00
 PAGES: 2 RCPT#: 30216
 2009R-07553 QUIT CLAIM DEED

QUITCLAIM DEED

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Parcels 3 through 7 are subject to part 511 of the Commercial Forest Part of the Natural Resources and Environmental Protection Act.


This Transfer is exempt from State Real Estate Transfer Tax pursuant to MCL 207.526(a), MCL 207.526(p)(ii) and MSA 7.456(5)(a)

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This property may be located within the vicinity of farm land or a farm operation. Generally accepted agricultural and management practices which may generate noise, dust, odors, and other associated conditions may be used and are protected by the Michigan right to farm act.

Dated: 12-23-09

GRANTOR(S)

By: 
Thomas J Moyle

By: 
Denise B Moyle

STATE OF MICHIGAN)
HOUGHTON COUNTY)

The foregoing instrument was acknowledged before me this 23rd of December 2009 by Thomas J Moyle and Denise B Moyle, husband and wife.

Margaret A. Gariepy

Margaret A Gariepy

Notary public, State of Michigan, County of Houghton

My commission expires 6-1-2011



Drafted by and when recorded return to:
Andrew J Moyle (P71859)
PO Box 414
46702 HWY M26
Houghton, MI 49931

b. Permitted Uses

(1) Dwelling, single and multi family dwellings.

(2) Mobile home.

(3) Agriculture and forestry.

(4) Public or private community facilities such as schools, churches, cemeteries, libraries, parks, recreational facilities, hospitals, institutions, etc. (Also see Section 9 of this Ordinance).

(5) Signs as permitted in Section 5 of this Ordinance.

(6) Neighborhood services.

c. Accessory Uses

(1) Home occupations and neighborhood related services in a single-family dwelling provided that such use is incidental to the main use as a dwelling, and further provided that such use is limited to a person actually residing in the dwelling.

(2) Living quarters for hired help such as a tenant house, mobile home, apartment, or room for persons employed on the premises.

(3) Barns and other bona fide farm buildings or structures.

(4) Private garages and private greenhouses.

(5) Roadside stands with adequate parking, and parking as regulated in Section 4.

(6) Riding stables.

d. Special Uses

(1) Public utility and service uses such as electric substations, regular stations, telephone transmission structure, radio-television-microwave relay towers, water reservoirs or pumping stations, government building, transportation facilities and similar uses. (See Section 9, Special Uses)

e. Bulk Requirements

(1) Lot:

(a) Minimum Lot Area

Single/Multi Family Dwelling	1 acre
Mobile Home	1 acre
Other Uses	1 acre

(b) Minimum Frontage

NICHOLAS J. DAAVET'TILA
ATTORNEY AT LAW, PLC

NICHOLAS J. DAAVET'TILA
ADMITTED TO PRACTICE LAW
IN MICHIGAN AND WISCONSIN

417 SHELDEN AVENUE, SUITE 1
HOUGHTON, MICHIGAN 49931
TELEPHONE: (906) 482-6310
FAX: (906) 482-3841

August 25, 2010

Thomas J. Moyle, Jr., Incorporated
c/o Kimberly R. Moyle
Resident Agent
P.O. Box 399
Houghton, MI 49931

Re: Operation of Valley View Quarry in Portage Township

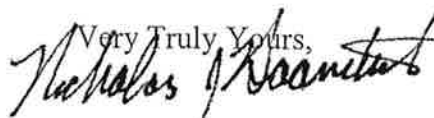
Dear Gentlemen and Mesdames:

Please be advised that I represent the Charter Township of Portage in Houghton County, Michigan, in relation to the enforcement of the Township's ordinance and the Valley View Quarry, currently in operation on Superior Road in Portage Township.

In a prior correspondence, dated June 12th, 2009, former Supervisor, Bill Bingham placed your organization on notice that the quarry operation in Section 15, Township 54 North, Range 34 West is not in compliance with the Portage Township Zoning Ordinance. As everyone involved in this situation is aware, the property is zoned rural residential and there is no allowable use within the rural residential zoning classification which provides for gravel or mineral extraction. The position of Portage Township was reaffirmed at a special meeting held by the Portage Township Board on August 24th, 2010 for the specific purpose of reviewing the quarry situation. By unanimous vote of the Board, the current land use of gravel extraction was determined to be in violation of the zoning ordinance and instructions were given to my office to initiate proceedings to bring the violative land usage to a halt.

Therefore, I write to reiterate that the quarry operation is in violation of the existing zoning ordinance and it must be brought to conclusion immediately. The Portage Township Board has ordered that the operation be stopped within ten days of this correspondence. In the event that the Township's order and ordinance are ignored or disregarded, the Township will be pursuing an injunctive order from the Houghton County Circuit Court.

Naturally, I would be happy to discuss this matter with you at any time. Should you have any questions, please do not hesitate to contact me.

Very Truly Yours,


Nicholas J. Daavettila

NJD/lap
c: Portage Township Board

EXHIBIT

3

tabbies

conform with the provisions of this Ordinance and shall further state any special limiting conditions of such occupancy or use.

3. **Required for Nonconforming Uses** - Any use or occupancy of land or building not specifically permitted in its particular zoning district shall require the issuance of a Certificate of Occupancy for continued use. The Certificate shall indicate the authorized use, the authority by which it is permitted, and any limiting conditions to such use.
4. **Time for Application** - All Certificates of Occupancy shall be applied for coincident with the application for a building permit or within ten (10) days of a contemplated change in the use of a building or land. A Certificate of Occupancy shall be issued within ten (10) days after the lawful erection or alteration of a building is completed as certified by the Zoning Administrator.
5. **Availability of Record** - A record of all Certificates of Occupancy shall be kept on file in the office of the Zoning Administrator and copies shall be furnished on request to any persons having a propriety or tenancy interest in the building affected.

11.5 ENFORCEMENT

1. **Violation and Penalties**
 - a. **Violation a Nuisance** - Buildings erected, altered, moved, razed, or converted, or any use of land or premises carried on in violation of any provision of this Ordinance are declared to be a nuisance.
 - b. **Inspection of Violation** - The Zoning Administrator shall inspect each alleged violation and shall order correction, in writing, to the violator of all conditions found to be in violation of this Ordinance.
 - c. **Correction Period** - All violations shall be corrected within a period of thirty (30) days after the order to correct is issued by the Zoning Administrator or as such longer period of time as the Zoning Administrator shall determine. A violation not corrected within this period shall be reported to the Township Attorney who shall initiate prosecution procedures.
 - d. **Penalties** - Every person, corporation, or firm who violates, disobeys, omits, neglects, or refuses to comply with any provisions of this Ordinance or any permit, license or exception granted hereunder, or any lawful order of the Zoning Administrator, Board of Appeals or Planning Commission issued in pursuance of this Ordinance shall be guilty of a misdemeanor. Upon conviction thereof before any court of Houghton County, the violator shall be punished by a fine not to exceed \$100.00 plus court costs, or by imprisonment not to exceed ninety (90) days or both. The imposition of any sentence shall not exempt the offender from compliance with the provisions of this Ordinance.
 - e. **Remedies** - The Zoning Administrator, the Township Board of Appeals or the Township Attorney, and any interested party, may institute injunction, mandamus, abatement or other appropriate proceedings to prevent, enjoin, abate, or remove any unlawful erection, alteration, maintenance or use. The rights and remedies herein provided are civil in nature and are in addition to criminal remedies.
 - f. **Scope of Remedies** - The rights and remedies provided in this Ordinance are cumulative and are in addition to all other remedies provided by law.