

**Rossi & Ricci
Attorneys at Law
Grove City, Newcombe**

MEMORANDUM

To: Student
From: Ross Ricci
Date: April 15, 2020
Re: Inquiry from Tom Tallion

* * * * *

A new client of ours, Tom Tallion, has asked us to look into whether he can recover in a dispute with one of his neighbors, Bradley Carpenter.

According to Tallion, he and Carpenter orally agreed that Tallion would take care of Carpenter's asparagus plants for a period of two years. Carpenter planned to work overseas for those two years. At the end of the two-year term, Carpenter was to pay \$400 to Tallion.

Carpenter returned home early after only eighteen months abroad. While Carpenter was away, Tallion had dutifully cared for the asparagus plants. The plants were in great condition. Tallion was willing to finish out the two-year term of their agreement, but Carpenter told him that the deal was off and he would resume caring for the plants himself. Carpenter then refused to pay Tallion any money.

Please draft a memorandum to me analyzing whether Tallion has any legal recourse against Carpenter to recover the value of his services in caring for the asparagus plants and, if he does, what the dollar amount is of any monetary award to which Tallion is entitled. Your memorandum should follow the Memorandum Guidelines.



Excerpt from “Sowing Seeds” by Dr. Tina DeCapite

Growing asparagus (*Asparagus officinalis*) from seed takes patience, but it is worth the wait!

- **Step 1:** Start your seeds indoors in Spring (Feb.-May). Soak seeds in lukewarm water. Plant individual seeds 0.5 inches deep in small (2-inch) pots. Keep soil warm to allow germination, and do not allow soil to dry out. Seedlings should sprout in 4–8 weeks.
- **Step 2:** Transplant seedlings outside when they are 10–12 weeks old. Do not transplant until possibility of frost has passed. Space seedlings approximately 6 inches apart. Plant in rows with approximately 18 inches between each row. Consider planting near tomato plants to prevent garden pests.
- **Step 3:** Water the garden bed as needed (no more than 1 inch per week). Keep the garden bed free from weeds.
- **Step 4:** Be patient! Do not harvest any asparagus during the first 2 years after planting the seeds. Harvesting too early will damage the plant. Each Fall, cut the asparagus plant down to about 2 inches above the ground once the foliage has turned yellow or brown (typically after the first frost).
- **Step 5:** The asparagus plants will be ready to harvest during the late Summer of their third year of life. To harvest, cut the asparagus below the ground but above the crown. Harvesting season usually lasts 2–3 months. When properly cared for, asparagus plants are perennials that should come back year after year. Enjoy!



Excerpt from Transcript of Client Interview with Tom Tallion

Att’y Ricci: Good afternoon and welcome, Tom.

Tom Tallion: Thank you.

Ricci: What brought you to see us today?

Tallion: I’m having trouble with one of my neighbors, Bradley Carpenter.

Ricci: What sort of trouble?

Tallion: He owes me money but won’t pay.

Ricci: Tell me more.

Tallion: Brad has got this garden in his yard where he grows asparagus. Let me back up. About two years ago, Brad took a volunteer position overseas. The position was supposed to be for a two-year term. Before he left, we came to an agreement that I would tend his asparagus plants for two years in exchange for \$400.

Ricci: So this was in spring of 2018?

Tallion: Yes. We spoke in March 2018.

Ricci: And how did you and Mr. Carpenter make this agreement? Did you write it down?

Tallion: No. We just talked about it, and then he showed me how to take care of the plants.

Ricci: Did you discuss when the \$400 payment would be made?

Tallion: We agreed that he would pay me the full \$400 at the end of the two years if the asparagus was alive.

Ricci: How did you arrive at the \$400 figure? Did he suggest it or did you?

Tallion: He suggested \$400 and I said we should make it an even \$500. Brad said no to that suggestion. Apparently there was a college kid who lives down the block who was willing to do it for \$400. Brad said he trusted me more than the college kid, but that he wouldn’t pay me more than the \$400 that the college kid would charge him. I said okay.



Ricci: Did you discuss the dates of when the two-year term began and ended?

Tallion: Yeah, we did. We got pretty specific when we talked about it. We said that I would take care of the asparagus plants from April 1, 2018, until March 31, 2020. Then he'd pay me the money at the end.

Ricci: What happened then, after you and Mr. Carpenter made the agreement?

Tallion: Well, Brad left to go overseas in April 2018. I think the reason that he cared so much about his asparagus plants is because he had started growing them the year before.

Ricci: So he planted them in spring 2017?

Tallion: Yes, that's right. You see, after planting asparagus seeds, asparagus has to grow for three years before you can harvest it for the first time. Since Brad planted his asparagus seeds in the spring of 2017, Brad's asparagus plants won't be ready to harvest until the late summer of 2020. Brad had already sunk a year into growing the asparagus plants from seed by the time he left in 2018 to go overseas, so he didn't want to just let the plants die.

So anyway, he left in April 2018 to go overseas for his two-year volunteer gig. I started taking care of the asparagus just like I agreed I would. It wasn't all that hard—mostly just occasional watering and weeding, you know. Cutting back the asparagus took a little time that first fall, but it really wasn't that bad. I followed Brad's instructions. I did a good job with it.

Everything was going great until last fall. The asparagus was looking really good. We hadn't had the first frost of the year yet, so I hadn't trimmed the plants back for the winter. Then Brad came back early.

Ricci: Do you remember specifically when that was?

Tallion: Yeah. He came back in September 2019. He just showed up one day. He told me that the asparagus was looking really good, and he thanked me for taking care of it for the past 18 months. But then he told me that he would take care of it from then on. He didn't want me to keep tending the asparagus plants anymore.

Ricci: What did you say?



Tallion: I said that I was happy to keep looking after the asparagus through March 31, 2020, just like we agreed. He said no thanks and that he didn't want my services any longer. I said that was fine as long as I still got my \$400. He said no way. He said the \$400 was only if I looked after the asparagus until the end of March 2020 and that I hadn't done that. I said I was perfectly willing to perform my end of the agreement. He told me to buzz off and that he'd call the police if I came on his property again.

Ricci: So then what?

Tallion: That was it. I stopped taking care of the asparagus in September 2019 because Brad forbade me to go on his property.

Ricci: Did Brad start taking care of the asparagus plants at that point?

Tallion: Yeah, he did. And it looks like he'll have a fantastic crop this summer.

Ricci: Do you know why Brad came back early from overseas? Why didn't he serve out the two full years?

Tallion: I'm not sure exactly. Something about a typhoon.

Ricci: So what kind of resolution are you looking for?

Tallion: I want Brad to pay me for the work I did. We agreed he'd pay me \$400 to take care of his asparagus plants for 2 years. I took care of his plants for 18 months and only stopped because he forced me to stop. He hasn't paid me anything, and that just isn't fair.

