

EVANSVILLE WATER AND SEWER UTILITY)
)
Plaintiff,)
)
v.)
)
MCCURDY RENAISSANCE, LLC; MCCURDY)
100 DEVELOPMENT, LLC; MCCURDY 100) CAUSE NO. 82C01-1807-PL-004109
TENANT, LLC; BVFL I FI LLC; BMO HARRIS)
BANK N.A.; and)
ENHANCED CAPITAL HTC FUND I, LLC)
)
)
Defendants.)

Comes now the Defendants, McCurdy Renaissance, LLC; McCurdy 100 Development, LLC, and McCurdy 100 Tenant, LLC, by Krista B. Lockyear of Lockyear Law, LLC, and submit their answers and affirmative defenses to the allegations contained in the Complaint filed against them herein.

And now, answering the allegations of the Complaint filed against them, paragraph by paragraph, These Defendants would show the following:

1. Defendants deny the allegations of Paragraph 1 of the Complaint.
2. Defendants are without sufficient knowledge or information at this time to admit or deny the allegations of Paragraph 2 of the Complaint and thereby deny the same.

3. Defendants are without sufficient knowledge or information at this time to admit or deny the allegations of Paragraph 3 of the Complaint and thereby deny the same.
4. Defendants are without sufficient knowledge or information at this time to admit or deny the allegations of Paragraph 4 of the Complaint and thereby deny the same.
5. Defendants admit the allegations of Paragraph 5 of the Complaint.
6. Defendants admit the allegations of Paragraph 6 of the Complaint.
7. Defendants admit the allegations of Paragraph 7 of the Complaint.
8. Defendants are without sufficient knowledge or information at this time to admit or deny the allegations of Paragraph 8 of the Complaint and thereby deny the same.
9. Defendants are without sufficient knowledge or information at this time to admit or deny the allegations of Paragraph 9 of the Complaint and thereby deny the same.
10. Defendants are without sufficient knowledge or information at this time to admit or deny the allegations of Paragraph 10 of the Complaint and thereby deny the same.
11. Defendants are without sufficient knowledge or information at this time to admit or deny the allegations of Paragraph 11 of the Complaint and thereby deny the same..
12. Defendants admit the allegations of Paragraph 12 of the Complaint.
13. Defendants deny the allegations of Paragraph 13 of the Complaint.

14. Defendants deny the allegations of Paragraph 14 of the Complaint.
15. Defendants admit the allegations of Paragraph 15 of the Complaint.
16. Defendants deny the allegations of Paragraph 16 of the Complaint.
17. Defendants deny the allegations of Paragraph 17 of the Complaint.
18. Defendants are without sufficient knowledge or information at this time to admit or deny the allegations of Paragraph 18 of the Complaint and thereby deny the same.
19. Defendants deny the allegations of Paragraph 19 of the Complaint.
20. Defendants admit that the McCurdy Geothermal System was not connected to the City Sewer in late December 2017 and was not discharging to the City Sewer in late December 2017, but otherwise deny they are liable for any of the alleged charges and otherwise deny the remaining allegations of Paragraph 20 of the Complaint.
21. Defendants deny the allegations of Paragraph 21 of the Complaint.
22. Defendants are without sufficient knowledge or information at this time to admit or deny the allegations of Paragraph 22 of the Complaint and thereby deny the same.
23. Defendants are without sufficient knowledge or information at this time to admit or deny the allegations of Paragraph 23 of the Complaint and thereby deny the same.
24. Defendants deny the allegations of Paragraph 24 of the Complaint.

25. Defendants deny that City and/or the EWSU were at any time denied access to the McCurdy Building, but otherwise admit the allegations of Paragraph 25 of the Complaint.
26. Defendants admit that the First Amended Sewer Lien was recorded and that it says what it says, but otherwise deny the validity of said First Amended Sewer Lien, the factual statements contained therein and the balance of the remaining allegations of Paragraph 26 of the Complaint.
27. Defendants admit that the First Amended Lien says what it says, but otherwise deny the validity of said First Amended Sewer Lien, the factual statements contained therein and the balance of the remaining allegations of Paragraph 27 of the Complaint.
28. Defendants admit the Second Amended Sewer Lien says what it says, but otherwise deny the validity of said Second Amended Sewer Lien, the factual statements contained therein and the balance of the remaining allegations of Paragraph 28 of the Complaint.
29. Defendants admit that the Second Amended Lien says what it says, but otherwise deny the validity of said Second Amended Sewer Lien, the factual statements contained therein and the balance of the remaining allegations of Paragraph 29 of the Complaint.
30. Defendants admit that the Third Amended Lien says what it says, but otherwise deny the validity of said Third Amended Sewer Lien, the factual statements contained therein and the balance of the remaining allegations of Paragraph 30 of the Complaint.

31. Defendants admit that the Third Amended Lien says what it says, but otherwise deny the validity of said Third Amended Sewer Lien, the factual statements contained therein and the balance of the remaining allegations of Paragraph 31 of the Complaint.

COUNT I

32. Defendants reassert and incorporate by reference all the answers and responses made to the allegations contained in the above rhetorical paragraphs.
33. Defendants are without sufficient knowledge or information at this time to admit or deny the allegations of Paragraph 33 of the Complaint and thereby deny the same.
34. Defendants deny the allegations of Paragraph 34 of the Complaint.
35. Defendants are without sufficient knowledge or information at this time to admit or deny the allegations of Paragraph 35 of the Complaint and thereby deny the same.
36. Defendants deny the allegations of Paragraph 36 of the Complaint.
37. Defendants are without sufficient knowledge or information at this time to admit or deny the allegations of Paragraph 37 of the Complaint and thereby deny the same.

COUNT II

38. Defendants reassert and incorporate by reference all the answers and responses made to the allegations contained in the above rhetorical paragraphs.
39. Defendants deny the allegations of Paragraph 39 of the Complaint.
40. Defendants deny the allegations of Paragraph 40 of the Complaint.

COUNT III

41. Defendants reassert and incorporate by reference all the answers and responses made to the allegations contained in the above rhetorical paragraphs.
42. Defendants deny the allegations of Paragraph 42 of the Complaint.
43. Defendants deny the allegations of Paragraph 43 of the Complaint.

AFFIRMATIVE DEFENSES

Come now Defendants, by counsel, and for their affirmative defenses to the Complaint, would allege and state as follows:

1. Plaintiff's claims for relief herein are barred by its failure to simultaneously file an affidavit of debt in accordance with IND.T.R.9.2.
2. Plaintiff's claims for relief herein are barred, under the doctrines of laches, estoppel and/or waiver.
3. The Sewer Liens sued upon herein are defective and invalid for, amongst other reasons, (i) the intentional overstatement of the amount owed and asserted in said Sewer Liens,

and (ii) the charges or fees claimed therein are otherwise not due and owing.

4. Plaintiff's claims for relief herein are barred under the doctrine of unclean hands.

5. The assessment of said Sewer Liens, their recording and foreclosure is a violation of due process of law in the absence of Defendants being afforded the right to trial and adjudication of the validity of the Sewer Liens previously recorded and the validity and reasonableness of the charges and fees assessed therein.

6. Plaintiff's claims are fully barred by the doctrine of set-off.

7. Plaintiff is not legally distinct and/or existing entity with legal standing to enforce the claims herein, and the claims advanced herein have not been brought by the real party in interest, City of Evansville.

8. This Defendant reserves the right to assert additional affirmative defenses as the same may become known through discovery herein.

DEFENDANTS' COUNTERCLAIM

Comes now the Defendants/Counterclaim Plaintiffs, McCurdy Renaissance, LLC; McCurdy 100 Development, LLC, and McCurdy 100 Tenant, LLC, by Krista B. Lockyear of Lockyear Law, LLC, and respectfully submit their counterclaim.

1. Defendant/Counterclaim Plaintiff, McCurdy 100 Development, LLC, ("Owner") owns title to real estate located at 101 S.E. First Street, Evansville, Indiana, 47708 (the "McCurdy Building").

2. Owner is in the business of renting space to residential and commercial tenants in the McCurdy Building.

3. As early as October 6, 2018, Evansville Water and Sewer Utility "(EWSU)" and/or

its agents knowingly, willfully and maliciously made false statements as to the legality and/or amounts of water being discharged from the McCurdy Building into the City's storm water system.

4. As early as October 6, 2018, Evansville Water and Sewer Utility "(EWSU)" and/or its agents made false statements as to the amount of fees it should have been paid as a result of the water being discharged from the McCurdy Building into the City's storm water system.
5. On or about March 13, 2018, Plaintiff filed false liens against the McCurdy Building, knowingly, willfully and maliciously alleging false amounts from McCurdy to Plaintiff.
6. Plaintiff's claims of lien were filed without basis and with the malicious intent of extracting payment from Owner.
7. As a result of EWSU's slander of Owner's title to the McCurdy Building, Owner has suffered special damages including but not limited to a) loss of renewal of existing residential leases; b) loss of new residential leases; and c) loss of commercial leases.

WHEREFORE, Counterclaim Plaintiff, McCurdy 100 Development, LLC, by counsel, prays the Court enter judgment in its favor and against Counterclaim Defendant, EWSU, and that it be awarded the following relief:

- (a) An order releasing the liens on the McCurdy Building;
- (b) Damages for current and future lost rental revenue;
- (c) Costs of this action including attorneys fees and expenses; and
- (d) All other just and proper relief in the premises.

RESPECTFULLY SUBMITTED,

/s/Krista B. Lockyear

Krista B. Lockyear, 16653-53
LOCKYEAR LAW, LLC
101 SE First Street, Suite 224
P.O. Box 1345
Evansville, Indiana 47706-1345
Tel. (812) 962-6690
Attorneys for McCurdy Renaissance, LLC
McCurdy 100 Development, LLC
McCurdy 100 Tenant, LLC

CERTIFICATE OF SERVICE AND

CERTIFICATION OF COMPLIANCE WITH TRIAL RULE 5(G)

I hereby certify that the foregoing pleading complies with the requirements of Trial Rule 5(G) with regard to information excluded from the public record under Administrative Rule 9(G) and hereby further certify that, on September 17, 2018, I served a true and accurate copy of the same by the Court's electronic filing system on the following:

Jean M. Blanton, Esq.
Clifford R. Whitehead, Esq.
Ziemer, Stayman, Weitzel & Shoulders, LLP
20 NW First Street
P.O. Box 995
Evansville, IN 47706-0995

/s/ Krista B. Lockyear

KRISTA B. LOCKYEAR